

1 JOINT HEARING BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON LABOR
3 AND
4 STANDING COMMITTEE ON ECONOMIC DEVELOPMENT
5 -----

6 PUBLIC HEARING:

7 TO EXAMINE THE MINORITY AND WOMEN-OWNED BUSINESS
8 ENTERPRISES PROGRAM, AND CONSIDER POTENTIAL
9 LEGISLATIVE SOLUTIONS TO CREATE A MORE
10 EFFECTIVE AND EFFICIENT PROGRAM TO ENHANCE
11 NEW YORK'S BUSINESS CLIMATE
12 -----

13 Van Buren Hearing Room A
14 Legislative Office Building, 2nd Floor
15 Albany, New York

16 May 30, 2018, at 9:00 a.m.

17 PRESIDING:

18 Senator Frederick J. Akshar II (Sponsor)
19 Chairman
20 NYS Senate Standing Committee on Labor

21 Senator Phil Boyle
22 Chairman
23 NYS Senate Standing Committee on Economic Development

24 Senator Patty Ritchie, Sponsor

25 CO-SPONSORS PRESENT:

Senator George A. Amadore, Jr.
Senator Pamela Helming
Senator Timothy Kennedy
Senator Betty Little
Senator Terrence Murphy
Senator Elaine Phillips
Senator Susan J. Serino

ALSO PRESENT:

Senator James Sanders, Jr.

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1 SENATOR RITCHIE: I want to thank everyone
2 for coming out today and taking their time to come
3 and testify.

4 The MWBE program I think is a program that
5 many of us believe is a program that has merit.

6 So I, for one, am looking forward to hearing
7 from those testifying that have had success with the
8 MWBE program.

9 In my district, we've had some challenges
10 because we have only 10 percent qualifying
11 businesses. Though we have hosted workshops in the
12 district, we still do not have the number of
13 qualified businesses, and that's causing a real
14 issue.

15 So I'm hoping today that I'll hear from those
16 that maybe are struggling a little bit with the
17 program on ways that we can make it better, and also
18 hearing from people who are having success, and
19 maybe sharing that across other areas of the state.

20 With that, you know, I would just like to
21 say, once again, thank you for coming to testify.

22 I am a little disappointed, though, given the
23 merits of this program, that we don't have anyone
24 from the second floor here.

25 That is something that I was hoping to hear

1 from so that we could actually build on the
2 successes in the program and continue to strengthen
3 it.

4 So with that, I just want to thank my
5 colleagues for being here, and I'll turn it over to
6 Senator Akshar.

7 SENATOR AKSHAR: So I too want to thank
8 everybody for being here this morning.

9 We're joined, of course, by our colleagues
10 Senator Kennedy, Senator Phillips, Senator Helming,
11 and we've been joined by Senator Little.

12 We'll be joined by others too who are serving
13 on this Task Force.

14 And I think it's important to note that
15 you'll see on the dais that this is a bipartisan
16 dais, and I want everybody to pay attention to that
17 because, clearly, we have invited many people to be
18 here today.

19 Some people took us up on our offer to come
20 and provide testimony.

21 My hope, of course, is that, through time,
22 people will recognize -- maybe people who have a bit
23 of an apprehension about coming and talking about
24 this program, that they'll realize that we are
25 serious, collectively, about finding solutions to

1 this program.

2 I, for one, agree with Senator Ritchie.
3 I think it's a -- the program is good on its merits.

4 I think it has some flaws and we need to --
5 we need to find a way to fix it, collectively.

6 So, I'm pleased to be here. I'm looking
7 forward to the testimony that we hear today.

8 And with that, I think I'll ask just our
9 colleagues to offer some brief remarks to start, and
10 then we'll get right into the testimony.

11 Senator Kennedy.

12 SENATOR KENNEDY: Thank you, Chairman.

13 I want to thank all the witnesses that are
14 here today that have come to testify on the future
15 of Article 15-A and the MWBE program here in
16 New York.

17 This year, as we all know, the Legislature
18 extended the program for one year, which gives us
19 time to discuss the future and what adjustments need
20 to be made for it. And I think it's important that
21 we hear from all sides of this issue.

22 Obviously, I don't only believe that it's a
23 worthwhile program, but I believe it's a necessary
24 program, providing opportunity to women and minority
25 businesses that, historically, have been

1 underrepresented and underutilized.

2 So the program is providing opportunity for
3 minority- and women-owned businesses that otherwise
4 wouldn't be there, has led to state contracts being
5 awarded in a more equitable manner.

6 However, I recognize the need for the program
7 needs to work for everyone.

8 And we have heard concerns about the program,
9 and the certification process, the utilization
10 rates, and the best attempts at hitting MWBE goals
11 on projects.

12 So I'm looking forward to hearing from folks
13 today, and moving forward and working together to
14 resolve these initiatives to make it work across the
15 state no matter where you live.

16 Thank you.

17 SENATOR AKSHAR: Thank you, Senator Kennedy.

18 Senator Phillips.

19 SENATOR PHILLIPS: So I just want to say,
20 good morning.

21 And I especially want to thank
22 Senator Ritchie and Senator Akshar, Senator Little,
23 for leading this effort.

24 I'm proud to be a part of this Committee, and
25 I look forward to the testimony.

1 SENATOR AKSHAR: Thank you.

2 Senator Helming.

3 SENATOR HELMING: Thank you, and good
4 morning.

5 I too want to thank you, Senator Akshar,
6 Senator Ritchie, and Senator Little for your
7 leadership on this very important issue.

8 I represent a portion of Upstate New York
9 that's located between the Syracuse and Buffalo
10 region, and not a week goes by that my office does
11 not receive a call concerning the MWBE program.

12 I agree there are merits with this program,
13 but in Upstate New York we're faced with a number of
14 challenges, meeting the MWBE requirements,
15 et cetera.

16 I look forward to the testimony today.

17 I think there are a lot of questions, a lot
18 of clarification that's needed. At the end of the
19 day, we're probably going to need to see some
20 changes made to this program.

21 Again, I thank you for the opportunity to be
22 here and to listen to the testimony.

23 SENATOR AKSHAR: Thank you, Senator Helming.
24 Senator Little.

25 SENATOR LITTLE: Thank you, and good morning.

1 I'm looking forward to the testimony, and our
2 goal here is to make this program better.

3 Thank you.

4 SENATOR AKSHAR: Wonderful.

5 With that, I'll invite Mike Elmendorf down to
6 provide testimony.

7 If everybody providing testimony today wants
8 to consolidate their testimony, we'd be happy.

9 Of course, you've provided this in writing to
10 us, and give us a little bit of more time to ask
11 questions.

12 Mike, however you can choose to do it.

13 Thank you for being with us.

14 MIKE ELMENDORF: I will not deliver all
15 67 pages.

16 [Laughter.]

17 MIKE ELMENDORF: Everyone's looking forward
18 to the testimony. We don't want to ruin that right
19 out of the gate.

20 So, good morning, Senator Ritchie,
21 Senator Akshar, members of the Task Force.

22 Senator Kennedy, in particular, thank you for
23 being here, and for your voice on this. I know
24 you've heard a lot about this issue from our
25 members, your constituents, as all of you have.

1 As Senator Akshar said, I'm Mike Elmendorf.
2 I'm the president and CEO of the Associated General
3 Contractors of New York State. We are New York's
4 leading statewide construction-industry
5 organization.

6 We represent, basically, the industry that
7 builds everything but single-family homes, union and
8 non-union, from every corner of New York.

9 And I very much appreciate the fact that the
10 Senate has called this hearing this morning to talk
11 about an important issue, and it is an important
12 program, and it's one that our association has a
13 long history with.

14 In fact, we helped write the original
15 Article 15-A. We are supporters of the program.

16 We've also enjoyed a long -- decades-long
17 partnership with groups like AMENY (the Association
18 of Minority Enterprises of New York), working with
19 them to do the hard work of actually building MWBE
20 capacity.

21 There's a lot of focus on goals, and I'll get
22 to that.

23 But, in some ways, I think that we're missing
24 the boat just by focusing on goals, and not focusing
25 on capacity building.

1 So we've partnered with AMENY and others for
2 decades to try to actually build capacity.

3 Just two weeks ago we kicked off a pilot
4 project here in the capital region in Schenectady,
5 with the City of Schenectady, Schenectady Community
6 College, and AMENY, to actually do that. We had
7 about 30 MWBE firms in our office for the first of a
8 six-part program, where they're going to learn how
9 to bid public work, learn the ins and outs of the
10 construction industry, because, by the way, this
11 isn't easy.

12 I think some who don't understand the
13 industry think you can just decide you're going to
14 go off and become a contractor and bid work and be
15 very successful.

16 Sadly, the flip side of it, I've seen
17 multi-generational family businesses go belly up
18 after one bad job.

19 It is a very dangerous, risky business, and
20 so you really have to build companies if they're
21 going to be able to succeed.

22 That said, while we're doing that good and
23 important work, I think to say that there are
24 problems with the current state of this program in
25 New York would be an understatement.

1 Sadly, to its peril, it has been morphed into
2 more of a political talking point than the program
3 that it is intended to be, and in the process, it
4 has seemed to become fairly, if not completely,
5 detached from the existing laws and regulations of
6 the state of New York that govern it; the
7 Constitution of the United States, which is an
8 important factor here, because these programs are
9 all constructed in a way to comply with the
10 Constitution, based on the Supreme Court's landmark
11 1989 Croson case; and perhaps, not least of all,
12 reality, because it's very difficult for our members
13 to do business with firms that either don't exist in
14 enough numbers, don't exist where they are, don't
15 have the capacity to do the work that they are
16 doing.

17 And so, Senator Helming, when you said you
18 get one call a week on this, I will gladly trade
19 places because this accounts for about 70 percent of
20 the contact we get from our members, which is
21 astounding, if you think about all the things that
22 AGC does, and all the issues that we are there,
23 historically, to provide for our members on.

24 So let's just kind of frame what this program
25 is about.

1 It's about remediation.

2 It is about addressing discrimination that
3 has been properly documented, and that's a good
4 thing.

5 If there is discrimination, it ought to be
6 attacked with vigor.

7 We stand against discrimination in all forms.

8 And, so, when you have a properly constituted
9 program, you determine: What's -- what is the
10 capacity of MWBE firms? What's their historic rate
11 of participation in public contracting?

12 And if there is a documented disparity that a
13 proper study determines is the result of
14 discrimination, then you develop narrowly-tailored
15 goals to deal with that.

16 And that word is important: Goals.

17 "Goals" is an important word.

18 The contractor's obligation under a properly
19 construed program is to make a good-faith effort to
20 meet a properly constituted goal.

21 Unfortunately, that's not what's happening
22 today in New York.

23 For starters, in 2014, the Governor announced
24 a great fanfare, the imposition of a 30 percent
25 goal.

1 And while you might have found that goal in
2 his PowerPoint presentation that morning, you will
3 not find that goal in state law, or in the
4 regulations that underpin the program, or in the
5 2010 disparity study which is currently what the
6 program is based upon.

7 In fact, based on state law, the goals for
8 construction contracts are 22.75 percent, and for
9 construction-related professional contracts, they're
10 24.53 percent.

11 30 percent doesn't exist in state law. It is
12 not a legal goal.

13 But the problems don't end there.

14 We then started seeing the near blanket
15 imposition of 30 percent goals across the board on
16 state contracts.

17 And I suspect, particularly for the upstate
18 members, this is a lot of what you've been getting
19 calls about.

20 That's not how this works.

21 The law, the regulations, are very clear.

22 The goal needs to be narrowly tailored. And
23 the regulations spell out in detail, that I've
24 provided in my written testimony, the factors that
25 are to be looked at in terms of how that goal is

1 established.

2 And it includes the geography of the project,
3 because I think we recognize that the demographics
4 of the state vary pretty widely, right, from region
5 to region. And they vary, also, based on what
6 you're doing, and the scope of the work matters.

7 And so the regulations clearly contemplate
8 that you're going to have goals that vary.

9 And so when you're seeing 30 percent goals
10 across the board, you know that the rules and the
11 law aren't being followed.

12 We also know it because we started asking a
13 lot of questions. We started FOILING every time
14 that we saw a contract with a 30 percent goal.

15 When we got answers, which was not most of
16 the time, they were interesting.

17 Couple of examples.

18 SUNY Canton had a project that went out in
19 Canton --

20 Good morning, Senator Sanders.

21 SENATOR SANDERS: Good morning.

22 MIKE ELMENDORF: Good to see you, my friend.

23 -- with a 30 percent goal in Canton. Not
24 exactly the most diverse region of the state.

25 So we asked them, please send us the analysis

1 that you did to determine that that's the correct
2 goal.

3 Well, they did. And their analysis said that
4 the goal should be 4 percent.

5 That's a big difference.

6 SUNY Stony Brook on Long Island had a
7 building project on their campus. Went out with a
8 30 percent goal.

9 And it's just interesting that it's always an
10 even number. Right?

11 Sometimes it's 15 and 15, sometimes it's
12 18 and 12, but it always seems to add up to 30.

13 They sent us their analysis. It determined
14 that the goal should be 21 percent and change.

15 May not seem like a big difference.

16 It's a huge difference if you're the
17 contractor trying to meet that goal.

18 Well, why is this happening?

19 Well, we received a very interesting
20 document, which I've shared with the Committee, from
21 Empire State Development called the "MWBE Operations
22 Primer."

23 And that document directs agencies that they
24 are not permitted to proceed with a procurement with
25 an MWBE goal of less than 30 percent unless they've

1 gotten permission from the Governor's Office.

2 There's a special e-mail address set up in there
3 where they have to send a request and documentation
4 for permission to put out a goal under 30 percent.

5 That bears no relation to current state law,
6 no relation to the regulations that govern goal
7 setting, and, certainly, is violative of Croson's
8 requirement that the goals be narrowly tailored.

9 We ended up suing five state agencies over
10 this point because the mainline state agencies were
11 far less responsive.

12 Those five agencies, three of them were
13 ordered to provide us with -- well, actually, two of
14 them, after we sued them, admitted they didn't have
15 the goal-setting analysis, so they weren't doing it.

16 Two of them were ordered to produce documents
17 by the Court, which they did, which were not a
18 goal-setting analysis.

19 And the other offered up an exception why
20 they weren't supposed to give us the documents, and
21 the Court upheld that. We are appealing that.

22 No agency provided us with a goal-setting
23 analysis that resulted in a 30 percent goal.

24 So the problem here, really, is that the
25 rules are not being followed. The rules are being

1 short-circuited by directives from the
2 Administration, and, that, I think is where much of
3 the frustration that our members are feeling, and
4 that you're hearing from your constituents, is
5 coming from.

6 Because, if we follow the law, and that's
7 what we're looking for here, you're going to have
8 more reasonable goals that may be able to be met.

9 The other evidence here that this isn't
10 working is the number of waivers that have been
11 issued.

12 When the Governor announced in 2011 that the
13 goal was going to 20 percent, which is allowed under
14 the 2010 study, and current-law waivers did this --

15 There's a chart in my written testimony.

16 -- waivers shot way up.

17 When they went to 30 percent, waivers shot
18 way, way up, which is evidence that the goals are
19 not being properly set.

20 If they were being properly set, in more
21 instances, contractors would be able to meet those
22 goals. They wouldn't need to have so many waivers.

23 Then you fast-forward to the 2016 disparity
24 study, which was released last 4th of July weekend,
25 despite the fact that it was delivered in October to

1 the Administration. But it was released on 4th of
2 July weekend.

3 It did a good job of ruining my 4th of July
4 weekend as I read it outside by the pool.

5 That study concludes, rather amazingly, that
6 the -- that 53 percent of the construction industry
7 in New York is owned by minorities and women.

8 Well, if that number has any credibility at
9 all, why are we having waivers on 30 percent goals?

10 Even if you accept that 30 percent is legal,
11 which it's not, and you accept that it should be
12 imposed across the board, which it can't be, why are
13 there so many waivers being issued if we have more
14 than 20 percent excess capacity in this industry?

15 Our contractors should be having no problem
16 reaching those goals if that number is correct.

17 In fact, that number is not correct.

18 It's hard to attack the number directly
19 because there's no data in the study.

20 And I understand that the Senate has asked
21 for that data and hasn't gotten it.

22 The most identifiable data source in the
23 disparity study, which the State of New York paid
24 \$2 million for, is a Survey Monkey survey --

25 You've all gotten these?

1 -- that had a 6 percent response rate.

2 When we had a meeting of our members, we sent
3 out a Survey Monkey survey and asked them: How was
4 the meeting? How was the food?

5 We get more than a 6 percent response rate.

6 I'm not sure that really rises to the level
7 of the type of social science that you need to
8 underpin a program like this.

9 So the 2016 study is fundamentally flawed.

10 We think, essentially, we need to go back to
11 the drawing board here.

12 15-A is an important program.

13 This program is an important program.

14 In fact, as I said earlier, if we followed
15 15-A, I don't think we'd be here talking about this
16 this morning.

17 We agreed with the Legislature's decision not
18 only to extend the program, because it should be
19 extended, but more importantly, to reject the
20 Governor's proposal that would have made the way
21 things are going now seem like the good old days
22 compared to what was in the executive budget.

23 The Legislature did the right thing, and they
24 did the right thing for everyone involved here.

25 They did the right thing for our industry,

1 who are already being placed at risk because they
2 were being pushed to achieve goals that aren't
3 properly set.

4 But you did the right thing for this program,
5 because if the program is not being administered
6 properly, and by "properly," that is, not only in
7 accordance with the laws of state of New York, but
8 the Constitution, and the restrictions of the
9 Croson case, it will be challenged, and it will be
10 toppled.

11 And it happened before in New York. In the
12 early '90s, when the administration of the program
13 deviated from the law, deviated from the
14 Constitution, there was a lawsuit, and the program
15 was struck down and the State had to start over
16 again.

17 We joined during the budget process with more
18 than 30 construction, business, labor, groups across
19 the state to offer an alternative.

20 Extend the law, which the Legislature did.

21 Appropriate funds for the procurement of a
22 new, proper disparity study.

23 The 2016 disparity study, if it is put in
24 force, will be challenged, it will fall, it will
25 bring the program down. It is fundamentally flawed.

1 And I'm sorry that Mason Tillman couldn't be
2 here to talk about their study this morning.

3 But beyond that, let's get back to where
4 I started, which is building capacity in this
5 industry. That is how you increase diversity, erase
6 discrimination, create opportunity.

7 And building capacity doesn't start with just
8 focusing on goals and focusing on certified
9 companies, because, again, you don't wake up in the
10 morning and become a contractor.

11 Contractors come from the industry. Working
12 in the industry is that path to entrepreneurship.

13 And, so, we look around the state at
14 communities where they're underserved, there aren't
15 enough opportunities. And then we look at our
16 industry across New York and across the country.

17 There aren't enough people.

18 We have a workforce shortage in New York and
19 everywhere in the country.

20 Seems like these would be two good groups of
21 people to get together, right; folks who have jobs
22 that they need to fill, folks who need
23 opportunities.

24 And that's the work that we're doing in
25 Schenectady with AMENY. It's something that we want

1 to try to duplicate around the state.

2 And you know what happens when you get folks
3 into the industry, you get them in the workforce,
4 you teach them the business?

5 Some of them decide they want to own the
6 business, and they become contractors. And then you
7 have more capacity, and then you have more
8 diversity.

9 That's where our focus should be.

10 We're missing the boat just by focusing on
11 numbers. Even if the numbers are properly
12 established, that's part of it.

13 If there's discrimination, it ought to be
14 taken on, head-on. It's wrong.

15 And we share that commitment. And, again, we
16 helped create the program.

17 But let's take a broader view.

18 Let's follow the law.

19 Let's follow the constitution.

20 Let's fix 15-A in New York.

21 Let's increase opportunity, but let's grow
22 workforce.

23 That's real opportunity for people who don't
24 just get on with the right list to be certified to
25 participate in public contracting, but for folks

1 around the state who want careers, want
2 opportunities, want jobs.

3 So thank you for this opportunity to talk to
4 you about this this morning and engage in this
5 conversation.

6 And, certainly, I would welcome any questions
7 that you might have.

8 SENATOR AKSHAR: So we've been joined by
9 Senator Amedore, Senator Boyle, and Senator Sanders.

10 And I just want to note, specifically about
11 Senator Sanders, we specifically had a robust debate
12 a couple of weeks ago about this particular program
13 on the floor of the Senate when we introduced a
14 piece of legislation.

15 And I thought that the conversation that we
16 both had was good during that debate.

17 I thought Senator Sanders brought a lot of
18 goodwill and a lot of education on this subject to
19 the table.

20 So, Senator, I just want to personally say,
21 thank you for your willingness to serve on this Task
22 Force, and I look forward.

23 I failed to say this, we are going to travel
24 the state and have several statewide hearings on
25 this issue. And the good Senator has agreed to

1 travel with us.

2 So, I thank you for that.

3 With that, I'll just turn it over to the
4 folks on the dais to ask Mike any questions that
5 they may have.

6 SENATOR SANDERS: When it's appropriate, I'd
7 love a question.

8 SENATOR AKSHAR: Sure. Go ahead, Senator.

9 SENATOR SANDERS: Oh, thank you, thank you.

10 First, I would like to compliment the Chairs
11 for coming up with a very interesting thing.

12 Every once in a while you should stop and
13 look at what you're doing. There's something good
14 to be said about this process.

15 I don't care what it is, you should never get
16 so ossified that you can't stop and look and see if
17 there's anything better.

18 I agree with you, sir, that we had a very
19 robust conversation, and we did something perhaps
20 different. We -- it was more light than it was
21 heat.

22 Usually these conversations are just, you
23 know, trying to get zingers. Who could out-zing the
24 next guy.

25 But here you actually had something, and

1 I believe that there's a spirit of goodwill that I'm
2 here to attest, to uphold, as a matter of fact, that
3 if we are trying to mend it and not end it, then I'm
4 never opposed to seeing a way of making a thing
5 better.

6 I have my suspicions and fears, but that's
7 all right. That's why I'm a Senator. We have a lot
8 of that.

9 With that, and it is good to see you, sir.

10 MIKE ELMENDORF: Likewise.

11 SENATOR SANDERS: You seem to stay in Albany
12 a great deal.

13 MIKE ELMENDORF: I live here.

14 SENATOR SANDERS: Well --

15 MIKE ELMENDORF: People actually live here.

16 [Laughter.]

17 SENATOR SANDERS: -- I've got to find a way
18 to get you out of Albany more.

19 MIKE ELMENDORF: I do plenty of that too.

20 [Laughter.]

21 SENATOR SANDERS: I believe that there's a
22 place way up by the Canadian border that can use a
23 guy like you.

24 [Laughter.]

25 MIKE ELMENDORF: I take that as a compliment?

1 SENATOR SANDERS: Oh, you don't want him in
2 your district?

3 [Laughter.]

4 SENATOR LITTLE: He's doing a good job down
5 here.

6 SENATOR SANDERS: Well -- well, let's see
7 about that.

8 Let me start by saying just the context of
9 the conversation. Sometimes conversations need
10 context.

11 Where we're talking about 30 percent, but we
12 are really leaving out the 70 percent; the
13 70 percent of the contracts of New York State that,
14 basically, are held by older White men.

15 So we're taking them totally off of the table
16 and we're going to concentrate on just a goal, not
17 even the real 30 percent.

18 A goal of 30 percent.

19 And I agree, there may be places in New York
20 City -- New York City -- ah, New York
21 (indiscernible).

22 There may be places in New York State that
23 don't have many people of color.

24 I know you can't imagine that, but it may be
25 true.

1 What about women?

2 What about White women up there?

3 It's "MWBE," which means all we -- if there
4 aren't people of color, if you wish, running around,
5 then why aren't we getting more White women in those
6 areas to work?

7 MIKE ELMENDORF: Well, Senator, a couple of
8 things.

9 First of all, you know, for the benefit of
10 the Committee, we spent a lot of others with
11 Senator Sanders, talking about this, and I think it
12 has been in goodwill.

13 SENATOR SANDERS: Yes.

14 MIKE ELMENDORF: We've maybe agreed on a few
15 things. Probably disagreed on more than we've
16 agreed. But we've agreed to keep --

17 SENATOR SANDERS: Probably 50/50.

18 MIKE ELMENDORF: Maybe.

19 -- we've agreed to keep talking and be
20 agreeable about it.

21 SENATOR SANDERS: Yes.

22 MIKE ELMENDORF: And I think that's what this
23 should be about.

24 First, I'm not sure that I -- I share the
25 premise of your question that with -- in the absence

1 of goals you don't have participation and
2 opportunity for minority- and women-owned businesses
3 in contracting, because I don't -- I don't think
4 that that's true.

5 And I think the notion that, without a goal,
6 a contractor wouldn't utilize a minority- and
7 women-owned business is wrong.

8 SENATOR SANDERS: But this is not happening.

9 MIKE ELMENDORF: Well, certainly it's
10 happening.

11 Our contractors use MWBE firms all the time
12 within the absence of a goal. There's a thing
13 called "private-construction activity" --

14 SENATOR SANDERS: Explain the 70 percent.

15 MIKE ELMENDORF: -- in New York.

16 SENATOR SANDERS: Explain the 70 percent.

17 MIKE ELMENDORF: The 70 percent?

18 SENATOR SANDERS: Yes.

19 MIKE ELMENDORF: Well, you're talking about
20 the notion that, absent the 30 percent that is a
21 goal, not a set-aside, a goal, that the rest of that
22 volume of work is not going to be participated in by
23 minority- and women-owned businesses.

24 And I don't -- that does not comport with the
25 experience that I've had.

1 SENATOR SANDERS: But, sir, the facts of
2 the -- of the case are, 70 percent of these
3 contracts, basically, are White men.

4 I mean --

5 MIKE ELMENDORF: Where -- from where do those
6 facts derive?

7 I haven't seen those facts.

8 SENATOR SANDERS: You will get the -- well,
9 the next time we're meeting, we will have the facts.

10 We're going to take -- we're going to take
11 the tour of the state, so at the next place I'll
12 have those facts.

13 MIKE ELMENDORF: But, by the way,
14 Senator Akshar has the best restaurants in New York,
15 in his district, with all due respect to everybody
16 else.

17 So I'll come eat in your districts too and
18 you can convince me otherwise.

19 [Laughter.]

20 SENATOR SANDERS: Well, I hope we're going
21 there next.

22 MIKE ELMENDORF: But another point, though,
23 which goes to the question of how the goals are set,
24 and you acknowledge that the demographics, the
25 availability, differ.

1 And the same is true for WBEs.

2 And the availability of M/WBEs will differ
3 based on what you're doing.

4 One of the things that we saw a few years
5 ago, which was maddening, was, you know, every year,
6 OGS lets contracts for the purchase of liquid
7 asphalt and pavement, which they -- your local
8 governments and others use in a vain attempt to try
9 to fill the many potholes that seem to increase in
10 numbers every year around the state.

11 That is a purchase for just material.
12 There's nothing -- it's just the material that is
13 being sold on State contract to local governments,
14 to -- to deal with trying to patch those potholes
15 and repair roads.

16 There's nothing else involved.

17 There's no trucking, there's no
18 subcontracting... there's nothing.

19 There are zero certified firms in New York
20 that own an asphalt plant.

21 And, by the way, go try to start one, good
22 luck with that. We'll -- you know, check back with
23 us in about five years and see if you've gotten
24 anywhere.

25 Zero.

1 The contract came up with a 30 percent goal.

2 It took months to unwind that because OGS
3 couldn't let the contract, and we lost months of a
4 paving season that starts in the spring and ends in
5 October.

6 People lost their workforce. Because these
7 folks work on seasonal unemployment, they're --
8 you're not paving roads in the summer. If this is
9 what you do, you're not working.

10 It shows that, one, the goals weren't set
11 properly.

12 Nobody, based on a reality of who was
13 available to participate in that procurement, would
14 have thought the goal should be 30.

15 The capacity there is hard zero.

16 But it also shows that the capacity is going
17 to vary based on what -- not only where you're doing
18 it, but what you're doing.

19 If you have a job that is very specific to
20 certain types of trades or materials, certain types
21 of construction, there may be fewer minority- or
22 women-owned businesses in that space just because --
23 that may just -- be just the way it is. All right?

24 It's -- you know, not -- all disparity is not
25 the result of discrimination.

1 Some of it may be as a result of business
2 choices that folks have made, that they don't want
3 to do certain things.

4 And, believe it or not, there are minority-
5 and women-owned businesses that don't want to do
6 public work, if you can imagine that.

7 It's not the end-all and be-all.

8 In fact, in a lot of ways, our building
9 contractors would prefer to do less and less public
10 work and do more private work.

11 And towards that end, one of the challenges
12 that this program presents for M and W businesses
13 is, we hear from our building contractors who do --
14 some do a mix of public and private work.

15 They have very good minority- and women-owned
16 businesses that they partner with successfully on
17 their public-works projects because they're driven
18 to them through the goals, who they'd love to use on
19 a private project, but they can't, because they
20 can't burn up their capacity on a private project,
21 where they can -- they can insert somebody else
22 because they need that M and W to either meet the
23 goal or get closer to meeting the goal so that they
24 can get -- they can proceed with their procurement.

25 And the last point I'd leave you with,

1 Senator, that debate you referenced with
2 Senator Akshar a couple of weeks ago on his bill,
3 I watched with great interest.

4 And I found myself agreeing with you more
5 than 50 percent in that.

6 SENATOR SANDERS: Oh, then I'm wrong.

7 [Laughter.]

8 MIKE ELMENDORF: Maybe you were. Maybe you
9 were having a bad morning, or afternoon. I don't
10 remember what time it was.

11 But, you know, you talk -- you expressed
12 concern about the notion that setting goals on a
13 regional basis would violate narrow tailoring.

14 And I think you're right, by the way.

15 I think that what Senator Akshar's proposed
16 is a lot better than just stamping "30 percent" on
17 contracts wherever possible, which is what's
18 happening now, which is certainly not narrow
19 tailoring.

20 But, doing it on a county or regional basis
21 is a lot more narrow than just 30, and yet I agree
22 that that's not narrow tailoring.

23 "Narrow tailoring" is look -- and it's
24 spelled out in the regulations, it is looking at the
25 procurement, looking at all the factors, looking at

1 the capacity.

2 If you look at the documents I included from
3 Stony Brook and SUNY Canton, which I've shared with
4 you privately, previously, that shows you what that
5 looks like.

6 It's real work.

7 I mean, you go -- it's like putting together
8 a utilization plan.

9 And I can well appreciate why the agencies
10 might not doing it in many cases, because you do all
11 this work and then you're told, Isn't that nice,
12 it's 30.

13 And it's what happened in Canton. It's what
14 happened in Stony Brook.

15 And so some of the agencies just aren't doing
16 it, which are lawsuit-proof.

17 But they're violating narrow tailoring too.

18 That 30 is much less narrow than doing it
19 regionally, which, Senator, you objected to as not
20 being narrow tailoring.

21 And I agree with you, which is why we haven't
22 had a lot to say about that bill. It's better than
23 where we are now.

24 We've taken over the status quo, for sure.
25 But, you know, this needs to be done right.

1 And if the goals are set properly, there's
2 going to be less aggravation.

3 And the other point is, as we've talked to
4 you about, there's going to be more opportunities
5 for M's and W's, because when you're not doing a
6 goal-setting analysis, you're, potentially, missing
7 opportunities.

8 You know, Joe Holden from our shop, who's
9 been doing this for 30 years, you couldn't believe
10 some of the people that he knew, Senator.

11 He looks younger than he is, I suppose.

12 But, you know, he's talked about the fact
13 that you go through and you look at the specs on a
14 job. And maybe you've got a project that says, "you
15 got to use this type window," for no good reason,
16 other than, whoever designed the job thinks that
17 that's a really great type of window and they want
18 that window on their job.

19 But when you're looking at capacity, you
20 might have a whole bunch of M and W firms that could
21 provide windows, just not that brand.

22 If you do this analysis, you might say, you
23 know what? We can have more utilization if we
24 actually, like, think about it, instead of just
25 saying, well, the number is 30 because we were told

1 it must be.

2 SENATOR SANDERS: Another question, and then
3 I'll yield after a brief statement.

4 Where in the nation are they doing the type
5 of narrow tailoring that you're suggesting?

6 MIKE ELMENDORF: I think just about
7 everywhere.

8 Because you'll note, Senator, that these
9 programs are constructed in a way that's pretty
10 similar, because they're all designed to fit through
11 the same door that was opened by Croson. And that
12 decision was pretty clear about what is required in
13 terms of narrow tailoring.

14 You know, to be sure, there are problems
15 around the country with these programs to varying
16 degrees.

17 I'm not sure that any of them are as acute as
18 they are in New York.

19 Just last week there was a story about,
20 I think, I believe it was Columbus, Ohio, where they
21 had a Mason Tillman study, the same company that did
22 the New York disparity study, the 2016 study, that
23 they rejected because the data was flawed.

24 In New York we can't even tell you if the
25 data's flawed because we certainly haven't seen it.

1 And as I pointed out, the Senate hasn't seen it.

2 If you get it, please, do let us know.

3 But, generally speaking, that's how these
4 programs are done.

5 And when they're not narrowly tailored, when
6 they don't conform with Croson, they get challenged,
7 and they -- and many times they get struck down.

8 That's not what anybody here wants.

9 We want a program that works, that increases
10 diversity, decreases discrimination, increases
11 opportunity, and, again, follows the law, the
12 Constitution, and the realities of the industry in
13 New York.

14 SENATOR SANDERS: You gave me homework, and
15 I'm going to do it at that next place.

16 I want to give you a little homework, though.

17 I want you to show me or give me some
18 information by the next time we meet of where in the
19 nation we're doing this narrow tailoring that you're
20 speaking of, because I study this stuff, and I have
21 never seen anything that you're speaking of.

22 MIKE ELMENDORF: Well, I can tell you where
23 we -- where it was done very near by here --

24 SENATOR SANDERS: Okay.

25 MIKE ELMENDORF: -- until the ESD operations

1 primer directed the agencies to set goals to
2 30 percent, in violation of existing state law and
3 regulation. It's how the goals were always
4 established before.

5 It's not -- we're not asking for something
6 new. We're just -- it's a radical idea: We're just
7 asking to follow the current law and regulations of
8 the state of New York.

9 So the -- first, and I will get you that
10 information in short order.

11 But the easy answer is, it was here until
12 just a few years ago, that that was the case.

13 SENATOR SANDERS: Well, I thank you.

14 And we're going to have a very interesting
15 conversation as we -- as we go forward.

16 There are other questions, maybe I'll come
17 back. I'm sure I'll get a chance with some of these
18 other witnesses.

19 But, thank you very much for the opportunity.

20 SENATOR AKSHAR: Senator Ritchie.

21 SENATOR RITCHIE: I would just like to,
22 before I ask you a question, Mike, just comment to
23 Senator Sanders about some of the challenges that
24 we're having in our district.

25 Just like Senator Helming, on a, pretty much,

1 daily basis, we have contractors calling, saying,
2 you know: We want to abide by the standards, but
3 there aren't any businesses out there. Can you help
4 us?

5 And I know Senator Little hosted a meeting in
6 her office, and we met with the folks from MWBE and
7 we asked them, you know, What do we do to help the
8 situation?

9 And one of the comments back -- and
10 I represent a really economically-challenged area --
11 was: If you can't find somebody in your area, it's
12 all right to go to New York City.

13 Well, for me, that was kind of something that
14 I don't agree with because, if we have so many
15 people who are looking to work in our district,
16 there must be a way to address it.

17 So, we hosted a number of boot camps, tried
18 to. We had individuals that showed up. More often
19 than not, by the end of the paperwork process, they
20 told us that it was so complicated, took so long,
21 they finally gave up.

22 One of the -- one of the businesses that many
23 of the companies in our area actually used, who was
24 a certified MWBE, they were too successful. And
25 once they get over the \$300,000 threshold, their

1 certification was taken away.

2 So one business that many of the companies
3 could actually use, because they were a company that
4 they could get labor -- or, lumber from and buy off
5 the list, they were not certified anymore.

6 So not only is the situation not getting
7 better, it actually got worse.

8 So, you know, those are -- this isn't just
9 about trying to regionalize to get the number lower.
10 This is about finding out, how do we -- how do we
11 get more people to get certified?

12 So, I appreciate you being here.

13 And, Mike, if you could just explain some of
14 the problems that your contractors are having when
15 the bid comes out, what they have to go through in
16 order to find the 30 percent they're looking for,
17 and many times, they can't find the 30 percent.

18 MIKE ELMENDORF: Yeah, I mean, it's -- as
19 I said earlier, it really confounds me that we get
20 more calls about this than anything else.

21 And, you know, look, to be fair, when -- a
22 contractor's obligation is serious here, right, to
23 make a good-faith effort to meet the goal.

24 And, certainly, when you have an
25 administration that has made this program a

1 priority, as is entirely their prerogative to do,
2 and that in and of itself is not a bad thing,
3 contractors need to understand they need to do an
4 even better job of documenting their good-faith
5 effort.

6 And so we've invested a lot of time and
7 energy educating our contractors, generally, on
8 specific contracts.

9 They come to us and they talk about what
10 they've done. And we often tell them, well, you
11 know, you've got to do this too.

12 But, when you start with the premise that you
13 have a goal that was not properly established, which
14 is, in many cases, the case, because it's a
15 30 percent goal again that doesn't exist in law, and
16 that has been set on a contract not in conformance
17 with the law and regulations, you're sort of set up
18 to fail.

19 And so, you know, to the point that you
20 raised, Senator Ritchie, we have folks that are,
21 after they have done their solicitation in a
22 reasonable geographic area, which is, I think, a
23 direct quote from the regulations, and they can't
24 get the level of participation to meet the goal,
25 they're then told that they need to look statewide.

1 Well, I've got bad news.

2 Masonry subcontractors from Senator Sanders'
3 district are probably not coming to work in your
4 district, Senator Ritchie, they probably never have,
5 for good reason, because there's a lot to do down
6 there, and it is an equipment-intensive business
7 that we're in.

8 So you don't just go ahead and move everybody
9 and all your stuff to the far end of the state to go
10 work on a contract.

11 And, yet, our contractors are made to run in
12 circles, calling folks that are never going to work
13 in that geographic area.

14 In some cases, they get to know them, and
15 they recognize the phone number.

16 One of our mutual friends, Senator Akshar,
17 they recognize that 607 area code. And when his
18 folks call and they say, Will you quote on this job?
19 they say, We told you, stop calling us. We're not
20 going there.

21 This is a waste of everybody's time.

22 And the agencies are doing the same thing,
23 because then there's folks in the agencies that are
24 on the contractor to do more, to try to meet the
25 goal.

1 Because the other thing that's changed here,
2 is the agencies used to have the authority within
3 the agency to say, You've made the good-faith
4 effort. You've documented it, you did your
5 solicitations, you got what participation you're
6 able to get. You met the goal, or you didn't, but
7 you made the good-faith effort.

8 That's the obligation, not a requirement to
9 meet the goal.

10 Were that the case, it would be something
11 other than a goal, and then it would have its own
12 problems.

13 Well, that's not how it works anymore.

14 You know, there's another special e-mail
15 address that's been set up in the Governor's Office,
16 which is where the agencies have to seek permission
17 to grant a waiver for the balance of the goal.

18 And I talked about the trend on waivers.

19 Well, there's a couple of interesting things.

20 Recently, more -- you know, we're seeing more
21 and more times when there's not actually a waiver
22 being granted.

23 A contractor may be told, we accept your
24 utilization plan, provisionally, and you need to
25 keep trying to get more participation from M's and

1 W's throughout the course of the project.

2 Well, that may not be realistic. Right?

3 You've designed your project, you've got your
4 subcontractors, you've got your suppliers; it is
5 what it is.

6 If something changes, certainly, the
7 contractor can try to do it.

8 But now they're going through the project
9 with this uncertainty hanging over their head, and
10 at the end of the job, are they going to just get
11 paid and be all set, or are they going to get
12 whacked over the head because they haven't met the
13 goal because they never got a waiver in the
14 beginning?

15 Well, why is this?

16 Well, when you don't grant a waiver, you're
17 not putting another notch on that chart that -- that
18 I provided with information from ESD, because,
19 again, the increase in waivers is, to me, sort of,
20 on its face, evidence that the goals aren't
21 attainable.

22 And if they were being set more in tune with
23 the reality of what you're doing, they would be more
24 attainable.

25 The other thing that was really disturbing

1 was, in the executive budget proposal, the Executive
2 actually proposed, and a public reporting, on the
3 issuance of waivers.

4 And it really kind of makes one wonder, what
5 is the public-policy interest there?

6 I think, you know, both non-MWBEs and MWBEs
7 have an interest in seeing that information.

8 And I'm sure that you've heard it,
9 Senator Sanders, where, you know, our friends in the
10 MWBE community -- and they are our friends, you know
11 that -- they look at that number and they say, Why
12 are there so many waivers?

13 Well, I think it's because of the point
14 I made, which is, because the goals aren't being set
15 right.

16 What public interest is served by removing
17 that -- that reporting?

18 So, many of our contractors have folks in
19 their office that only do this; that do these
20 solicitations, that chase a goal that they know --
21 they know they're not going to be able to meet, but
22 they just have to keep running around and around and
23 around so that they can document sufficiently to the
24 agency that they've done it, so that the agency is
25 comfortable, if they go to that step, to go to the

1 Governor's Office to get permission to grant a
2 waiver on the goal.

3 It's taking up an enormous amount of time
4 that, as I would suggest, could be better spent
5 building capacity and doing the work that we're
6 doing to actually try to bring more people into the
7 industry.

8 SENATOR RITCHIE: Thank you.

9 SENATOR AKSHAR: Senator Boyle.

10 SENATOR BOYLE: Thank you.

11 And I'd like to thank the working group
12 Chairs, Senator Ritchie and Senator Akshar, for
13 holding this; and, Mike, for your incredibly
14 insightful testimony.

15 MIKE ELMENDORF: Thank you.

16 SENATOR BOYLE: And as I would like to
17 associate myself with Senator Ritchie's remarks,
18 there -- I see it getting -- possibly getting worse.

19 On Long Island, we don't have -- it's not a
20 problem of not enough, obviously, not like upstate.
21 There's different issues in different parts of the
22 state. But the difficulty in MWBEs getting
23 certified is unbelievable.

24 I hear it all the time in our office:

25 We went through the paperwork, we tried, and

1 forget it.

2 You know, my wife is a small-business person.
3 She's probably gone several times and just says,
4 "Forget it." And just throws it aside, doesn't want
5 to do it.

6 You know?

7 One thing I can tell you that -- it surprises
8 me, and it's not that the New York City
9 Administration is known for its efficiency, but
10 I think they're actually better at this, and they
11 are very aggressive.

12 They've been out to Long Island. I guess the
13 New York City region covers Westchester, Nassau,
14 Suffolk.

15 So they're trying to get their number they're
16 looking for, I think, like, 9,000 businesses they
17 want certified, so they make it much easier.

18 If we could just be, on the state level, as
19 good as New York City, it'd be fine.

20 One of the other things -- a problem, as
21 Senator Ritchie mentioned, is the decertification.

22 And I'm hearing over and over again from
23 companies that have been certified for, not years,
24 but decades, and, now, they suddenly get the
25 paperwork, "you're decertified."

1 We haven't changed our business model. We're
2 doing the exact same thing we've been doing for many
3 years. What happened?

4 So this is going to make it more difficult.

5 I do have one question, though.

6 So, on the 30 percent, or whatever the given
7 waiver is going to be, is it just -- say, a
8 construction project, we're going to build an office
9 building.

10 Is it just construction jobs that are counted
11 under this; or, any contracts, food services, for
12 example, if they did that?

13 I mean, would that count towards the
14 30 percent?

15 MIKE ELMENDORF: Well, for the agency, yes.

16 SENATOR BOYLE: Yeah.

17 MIKE ELMENDORF: So the goals apply to
18 procurements broadly.

19 SENATOR BOYLE: Right, right, yeah.

20 MIKE ELMENDORF: The program is a little
21 different for construction because construction is
22 different.

23 SENATOR BOYLE: Yeah.

24 MIKE ELMENDORF: And so, obviously, that's
25 what we're focused on.

1 But if you look at the agency, the agency set
2 a goal.

3 SENATOR BOYLE: Uh-huh?

4 MIKE ELMENDORF: And you probably won't be
5 surprised that all the agencies' goals are
6 30 percent, I believe.

7 SENATOR BOYLE: Yeah, yeah, yeah.

8 MIKE ELMENDORF: And they're -- everything
9 that they purchase goes towards that goal. So,
10 paper, paper clips, you know, you -- you name it.

11 SENATOR BOYLE: Yeah, yeah.

12 MIKE ELMENDORF: So it's not something that
13 just applies to our industry --

14 SENATOR BOYLE: Right.

15 MIKE ELMENDORF: -- but it is -- the program
16 is unique in a lot of ways --

17 SENATOR BOYLE: Yep.

18 MIKE ELMENDORF: -- for our industry.

19 And, our industry is different.

20 I mean, if you're -- if you are, you know,
21 getting accounting services, it would be much easier
22 if you're in Senator Ritchie's district to get an
23 accountant from Senator Sanders' district. You can
24 do that from afar.

25 You can't build something from afar.

1 And so the challenges that are posed to our
2 industry by this, I think, you know, are a little
3 bit different, which is, again, why we are so
4 adamant that we have to set the goals right in the
5 first instance.

6 SENATOR BOYLE: Right.

7 And so -- and your remarks also on the fact
8 that there -- got a website for waivers, it's,
9 really, the entire decision is being made by the
10 Governor's Administration. Right?

11 I mean, it's -- the law might as well not
12 even be there. It's just, well, you -- we're going
13 to make it up as we go along on each individual
14 basis.

15 MIKE ELMENDORF: Well, that's certainly what
16 that document, which is attached to my testimony,
17 suggests.

18 And it -- this -- there may be a more recent
19 version of that document.

20 That's the one that we received, and we've
21 gotten some earlier versions.

22 But, you know, again, nowhere in the process,
23 as it's laid out, is it contemplated that that
24 decision will reside someplace other than in the
25 agency.

1 SENATOR BOYLE: Right.

2 MIKE ELMENDORF: And I -- you know, I think
3 that, you know, the intimation is clear:

4 Your goal should be 30 percent.

5 Your project is going to be delayed if it's
6 not, because you're going to go through this process
7 with the second floor to get approval to proceed.

8 And, you know, frankly, you know,
9 confidentially, we've had conversations with
10 agencies where they've said to us, they think that
11 they're helping the industry by just going out with
12 30, and trying to figure out how -- where they can
13 get in dealing with it later, because, you know, the
14 things that the State is building are things that
15 need to be built. Right?

16 You got to replace that bridge. You got to
17 fix that road. You've got to build that building.

18 You know, these are not things that are sort
19 of like, maybe we'll redo the kitchen next summer.

20 SENATOR BOYLE: Right.

21 MIKE ELMENDORF: So they don't want to delay
22 the projects.

23 And so I think the agencies, much like our
24 industry, are under an enormous amount of pressure.

25 And, again, if we can just force the goals to

1 be set according to law, and we -- and that's one of
2 the things that we called for in the budget, there
3 needs to be transparency on the goal setting.

4 And what they ought to do is, when they
5 pre-bid, when the documents go out to contractors or
6 potential bidders, the analysis, much like what
7 Stony Brook did, what Canton did, there's plenty of
8 other examples, that should be part of the pre-bid
9 package.

10 SENATOR BOYLE: Uh-huh.

11 MIKE ELMENDORF: And that protects everybody.

12 It protects the MWBE contractor because they
13 know the goal's being set right.

14 Because, as arbitrary as what's happening
15 now, imagine an alternative universe where you have
16 a governor that decides that the goal should be 4 on
17 every contract. And you can't go out with higher
18 than 4 unless you've gotten permission from the
19 Governor's Office to do that.

20 That would be just as wrong as that you can't
21 go out without 30.

22 The other benefit is, that, for a contractor,
23 they look at that it's a road map. How do I get --
24 here's how somebody who knows about -- something
25 about what we're building thinks you get there.

1 And it helps the contractor do a better job
2 of putting together their utilization.

3 Transparency is a good thing.

4 We have language that we could share with the
5 Senate to make that happen, and it's a relatively
6 minor change to 15-A that also protects the program
7 because it keeps it on narrow tailored.

8 SENATOR AKSHAR: I'd love to see that.

9 Thank you.

10 MIKE ELMENDORF: Certainly.

11 SENATOR AKSHAR: Senator Kennedy.

12 SENATOR KENNEDY: Thank you, Senator Akshar.

13 And, thank you, Mike, again, for your
14 testimony today, for your leadership on this issue,
15 and, throughout the year, the wealth of information
16 and knowledge that you bring to the table.

17 Your experience I think is absolutely
18 essential in getting us to where we need to go --

19 MIKE ELMENDORF: Thank you.

20 SENATOR KENNEDY: -- ultimately, in figuring
21 out a solution.

22 And I know that that's why we are all here.

23 I want to again thank my colleagues for
24 putting this together, this public hearing.

25 We're -- we're -- I want to associate my

1 comments with my -- all of my colleagues as well.

2 What's happening in every area of the state
3 is happening out in Buffalo and Western New York as
4 well.

5 I mean, it is -- I'm, literally, checking off
6 questions as I'm hearing them from my colleagues.

7 So, sounds like we're -- we're all on the
8 same page as far as some of the issues within the
9 program itself.

10 What are the solutions? I think that's the
11 bottom line here.

12 And, you know, I know that you spent
13 five hours with Senator Sanders. And the --

14 MIKE ELMENDORF: It was only three.

15 SENATOR KENNEDY: -- three hours?

16 MIKE ELMENDORF: Well, that one --

17 SENATOR KENNEDY: Three hours on one day.

18 Wait a minute.

19 Three hours one particular day.

20 A couple of hours with me another day.

21 MIKE ELMENDORF: Yes.

22 SENATOR KENNEDY: So, I know that you've been
23 intimately engaged in all of this.

24 But, you know, what we really need are
25 solutions, moving forward.

1 We bought ourselves some time, we bought
2 ourselves a year, to really figure out and get into
3 the weeds in -- of the issue.

4 And I respect and appreciate the fact that
5 this Committee will be moving across the state,
6 hearing these issues and hearing from those
7 impacted.

8 But, as far as certification goes, and, you
9 know, the good-faith requirements, and the level of
10 MWBE participation, and all of the things that we
11 have heard from our constituents about the program,
12 what is this ultimate solution?

13 Obviously, it has to be deliberated,
14 governmentally, with everyone at the table.

15 But I think, especially since you and your
16 organization were on the front lines on the initial
17 authoring of this legislation, if you could just
18 talk a little bit about what your vision is, and how
19 to resolve some of these issues, without necessarily
20 impacting.

21 Look, the Governor has been very clear on
22 that 30 percent goal. He's not budging.

23 And I appreciate the -- conceptually, what
24 the Governor and this Administration is trying to
25 do: Increase women and minority participation in

1 the workplace.

2 I think that is a worthy and necessary goal,
3 and I think we all share it.

4 How do we get there?

5 And what do we need to do in the short term
6 and the long term?

7 MIKE ELMENDORF: Thank you, Senator.

8 You know, I go back to the -- really, the
9 kind of, I think, fairly simple three points that
10 the 30 groups and AGC put forth in the context of
11 the budget.

12 We need a new disparity study anyway. Right?

13 That's why the 2016 study was done. The
14 2010 study is based on data that's, like, 13 years
15 old at this point, and there is a staleness issue of
16 the data. And some of these programs have been
17 challenged in the past because the underlying data
18 is too old. The world changes.

19 The other thing that changes is, remember, if
20 the program has been successful, we have decreased
21 disparity.

22 We have -- by increasing utilization of M's
23 and W's in contracting, there's no question that the
24 Cuomo Administration has done that.

25 What the number really is, there is questions

1 about that. There have been audits of some of the
2 agencies that have questioned how it's being
3 accounted.

4 But it is certainly more than it was before.
5 That's a good thing. That's something that the
6 Governor and his Administration should take pride
7 in, and we support that.

8 But if you've increased utilization, the
9 disparity might have gone down, right, unless there
10 are more firms that have come into existence and
11 been certified.

12 And that's certainly an issue that we've
13 talked about.

14 So I think you need a few things.

15 We need a new disparity study. The 2016
16 disparity study is -- as I said, it's flawed.

17 If it is put into force to underpin this
18 program, it will be challenged, by somebody.

19 Maybe it will be part of that challenge,
20 I don't know, but it is -- it is defective. It will
21 not do what needs to be done to maintain the
22 program.

23 And we don't want to see that happen.

24 We need a properly conducted disparity study
25 that has the underlying data, that's procured in the

1 right way.

2 This -- this -- this study -- what the RFP
3 for the study said, the purpose of the study was to
4 increase M and W utilization.

5 While that may be a goal that people support,
6 that's not why you do these studies.

7 The purpose of the study is to determine what
8 is the state of the world in New York State right
9 now, relative to disparity, to provide a
10 constitutional basis for the program.

11 So it was flawed, kind of, like, before it
12 started, in terms of what was asked for.

13 So, do a new disparity study. Extend the
14 current law for the appropriate amount of time to
15 allow that to happen.

16 At the same time, amend the law to force
17 transparency on goal setting, as we've talked about,
18 because, if you have goals that are properly set,
19 you will have a lot less agitation about all of
20 this, and you'll actually be able to meet the goals,
21 and you'll have goals that will actually increase
22 opportunities for utilization.

23 And then I think, most importantly, we need
24 to get back to building capacity, building
25 workforce, increasing diversity in the industry.

1 We need to reinstate the old mentor-protege
2 program that existed in New York until, I think, the
3 '90s, The Alliance of Minority and Majority
4 Contractors.

5 It was a very successful program that brought
6 together MWBE and non-MWBE contractors, to help them
7 to get into the industry, grow, succeed, bid, and
8 become successful parts of our industry, because
9 that -- that's what we want to see at the end of the
10 day.

11 I don't think that we need to make wholesale
12 changes to 15-A. As I said at the beginning of my
13 testimony a long time ago --

14 I'm surprised anyone is still here.

15 -- the law works.

16 The trouble is not the law.

17 The trouble is what we have now, which is not
18 the law.

19 And I guess I conclude with the 30 percent.

20 If -- if a disparity study is done that
21 concludes that the disparity is now 30 percent in
22 New York --

23 And, by the way, the 2016 study doesn't
24 conclude that. It just says, the Governor said the
25 goal is 30 percent, so, okay.

1 That's not -- that's not science, that's not
2 how this works.

3 -- if a disparity study is done that says the
4 disparity is 30 percent, and it's a credible study,
5 so be it.

6 But know that would mean that the disparity
7 went up since the last time a disparity study was
8 done, which means the program is failing.

9 And I don't think that it is.

10 I think that the -- I think that, despite all
11 of these problems, that the program is succeeding.

12 Despite all these problem, I suspect that the
13 Governor could credibly say, there are record levels
14 of participation in minority- and women-owned
15 business -- in businesses in public contracting,
16 which is a good thing.

17 The other things that are happening here, the
18 rubber-stamping of an illegal goal, the other
19 short-circuiting of the processes that are here to
20 protect everyone, are bad things.

21 And so that -- our proposal is designed to --
22 at addressing that, but it starts with a new
23 disparity study, because you will -- you will have
24 continued problems around this program if it's based
25 on the 2016 study, which, by the way, the Governor

1 proposed that the Legislature adopt without really
2 adopting it.

3 The current law is based on the numbers from
4 the 2010 study being enacted into executive law and
5 into -- into -- into statute. That's those
6 "22 percent" numbers that I referenced.

7 The executive budget proposal said that the
8 program is just based on the most recent disparity
9 study, whatever that might be. Maybe there will be
10 a new one next week.

11 You guys don't need to trouble yourselves
12 with that in the Legislature. The goals can just
13 change whenever a new disparity study arrives.

14 That's a problem. I mean, that's certainly a
15 problem for the industry because -- and for
16 everybody.

17 It's a problem because that -- that isn't
18 very narrowly tailored. And it's also, I would
19 think, a problem for both Houses of the Legislature
20 because it tramples on your authority to make
21 public-policy decisions on an issue as important as
22 this one.

23 So, let's get a proper disparity study that
24 will stand up to public and legislative scrutiny,
25 and then let's take the findings of that study and

1 incorporate them into law, and continue this
2 program.

3 SENATOR AKSHAR: Senator Little.

4 SENATOR LITTLE: Thank you.

5 And thank you for your remarks.

6 One of the things is, in the North Country,
7 which is -- I have two regional economic development
8 districts in my district. And I want to speak about
9 the North Country Regional Economic Development
10 Council.

11 The Governor formed these councils -- I am
12 on, yes -- formed these councils 8 years ago because
13 he believed that different parts of the state had
14 different challenges in order to get to a decent
15 economy, and to have job growth, and all of those
16 things.

17 So he identified the North Country as being
18 one of those regions.

19 Now, it comprises of -- it's comprised of
20 seven counties. It takes up 20 percent of the
21 state's largest -- of the state territory, and only
22 2 percent of the state population.

23 And the total number, according to
24 North Country Chamber of Commerce, which works on
25 this, of MWBE enterprises in this vast region, is

1 119. Of these, only 19 are minority-, 103 are
2 women-owned businesses.

3 So the difficulty is, really, in getting
4 certified. It takes forever.

5 The difficulty of the whole waiver process
6 takes forever.

7 I have people in business who just don't want
8 to do it because of the paperwork.

9 Two things I would ask you:

10 There needs to be a more simpler
11 certification process.

12 And, apparently, from what I understand, the
13 federal process is much easier to be certified,
14 New York City is much easier to be certified, which
15 is why, perhaps, they are more successful.

16 We need some pilot-program ideas as to what
17 you see in the certification process is good.

18 A second big problem we have in the
19 North Country is the agency does not seem to
20 understand businesses that are inherited; family
21 businesses.

22 The parent dies, hands over the business to a
23 son and a daughter who have been equal in the
24 business so far. They go to try to be a minority-
25 and women-owned business, and it is very, very

1 difficult to get through. Constantly questioning
2 their motives, constantly questioning their
3 experience, education, in this type of business, and
4 all of that.

5 So, a way to make that more understandable to
6 the agencies.

7 And, then, much of it is they're not
8 publicly-owned companies that we have up north, a
9 lot of them. They are privately owned, so the
10 buildings, the equipment, they own, it takes them
11 way over the 3 1/2-million-dollar personal wealth
12 right at the start.

13 So I have a huge business that doesn't even
14 apply.

15 I have another one that's fourth generation,
16 that is national, and privately owned. They don't
17 apply. There's no way, and you try -- you can't
18 convince them to.

19 So how can we simplify suggestions for that,
20 and simplify even the application for the waiver.

21 Because what we are also finding is there are
22 people, businesses, can't get certified, so they go
23 through a certified business that's in another part
24 of the state. We pay them a 5 percent of the cost,
25 the profit thing, and they get to do the work.

1 Otherwise, many of these companies would have
2 to go out of business, and we would have to be
3 employing people outside of this regional economic
4 development, you know, region, and we would not --
5 never meet the goals that the Governor has set for
6 helping the economy in the North County.

7 MIKE ELMENDORF: Well, on the last point,
8 I would caution folks about doing that sort of a
9 pass-through arrangement with another company
10 because that's a dangerous thing.

11 We hear a lot about certification.

12 We hear a lot about decertification.

13 Senator Kennedy called me yesterday. He had
14 constituents in his office that were talking about
15 this.

16 And I think a couple of things are clear.

17 First, I think ESD needs more resources to
18 deal with this. It's become such a focus, and it's
19 become sort of a quagmire over there when folks go
20 into that process.

21 I wish the same scrutiny was put on setting
22 goals, and where goals are set, as is being put on
23 who gets into the program.

24 Maybe I don't even wish that much scrutiny,
25 because it's a lot of -- it's a lot of scrutiny.

1 And between the issues that folks have
2 getting certified, and then the decertifications
3 that we heard about, and we've gotten a lot of calls
4 about this, where, really, nothing has changed,
5 except, all of a sudden, now you're out.

6 It's hard to understand what's happening, you
7 know, inside that agency on this.

8 And, certainly, it is troubling to us because
9 every name that comes off of that list of certified
10 firms makes the challenge that our contractors have
11 to try to meet to goal, or get as close to that goal
12 as they can, that much more difficult, which is why,
13 you know, we had no objection to the legislation
14 that, Senator Ritchie, you co-sponsored with
15 Assemblywoman Bichotte on net worth --

16 SENATOR LITTLE: Right.

17 MIKE ELMENDORF: -- because that -- to us,
18 that's a big number.

19 SENATOR LITTLE: Let me ask you, though:
20 Could you, or one of your companies, or somebody,
21 look at the certification application and see what
22 they deem as really unnecessary, and how it could be
23 simplified, so that we could be like New York City
24 or like the federal government and be able to
25 certify sooner?

1 MIKE ELMENDORF: Yeah, certainly we can do
2 that. And our -- you know, our attorneys have
3 probably more -- much like me, they probably have
4 more experience with this than they wish they had.

5 And, you know, we can also look at what the
6 feds do.

7 And to Senator Sanders' question about what
8 goes on in other states, you know, we can look at
9 that as well.

10 Because, certainly, we don't want to see the
11 list of certified firms narrowing.

12 And then the one final point on the impact on
13 the regional councils, we've heard this around the
14 state.

15 We do regional meetings with the regional
16 councils. There's a lot of concern about the impact
17 that this program is having on two fronts.

18 One, it's pushing the economic impact of the
19 resources that are being put into the region through
20 the regional council process out of the region --

21 SENATOR LITTLE: Out of the region.

22 MIKE ELMENDORF: -- when a region has to then
23 go procure services from a company on the other side
24 of the state to try to meet the goal.

25 But the more troubling thing is, that we

1 heard in every region, that they have potential
2 projects, potential companies, that they're talking
3 to and they're outlining the process.

4 These goals are being attached as a
5 requirement for the funding that an entity that is
6 participating in the regional council process would
7 get.

8 So if you're a company looking at doing
9 something in the North County or in the
10 Southern Tier, or wherever, and you're getting an
11 incentive to make doing it, I guess, less
12 financially disadvantageous for doing it there than
13 it would otherwise be to make the numbers work; and
14 you're committing to meet a goal which wasn't
15 properly set, because it's 30, and you don't know if
16 you can meet it; and you don't not know at what
17 price you would have to, you know, add to your
18 project to meet it; and, if you don't meet it, you
19 may not get funding, in part or in total; and so
20 every regional council, they'll say, they have
21 companies that walk away.

22 They say, We can't -- we cannot go into that
23 process with that uncertainty.

24 SENATOR LITTLE: That's a major difficulty.

25 MIKE ELMENDORF: And the same thing's

1 happening with the effort to push this -- these
2 goals on local governments and school districts.

3 They've been -- it's already been attached to
4 local projects, notwithstanding the fact that
5 there's currently no legal authority to do that.

6 The 2010 disparity study does not look at the
7 procurement practices of any local government in
8 New York.

9 The Governor proposed legislation to do it in
10 the budget. The Legislature rejected it.

11 It's a weird thing, where you propose
12 legislation to do something that you were doing
13 before, and the Legislature rejects it, and you're
14 still doing it.

15 I don't understand that.

16 SENATOR LITTLE: Thank you.

17 SENATOR AKSHAR: Senator Phillips.

18 SENATOR PHILLIPS: Two quick questions,
19 because we have a lot of speakers.

20 You mentioned this SUNY Canton and
21 SUNY Long Island analysis.

22 As an example: SUNY Canton was 4 percent.
23 The analysis showed SUNY Long Island was 21 percent.

24 In your professional opinion, is the analysis
25 accurate?

1 Is it standardized analysis?

2 Is it accurate?

3 Does it reflect what we're looking at?

4 MIKE ELMENDORF: Yeah -- yes.

5 I mean, if you look at what -- and if you're
6 familiar with both those areas, those numbers
7 probably make sense.

8 You know, and if you look at what they did,
9 they actually go through and they break out the
10 value of each different aspect of the project --
11 each trade, the materials -- and then they compare
12 that against the certified firms within a reasonable
13 area.

14 So they're not presuming in Canton that
15 they're going to call folks, you know, in Jamestown
16 or in Smithtown or in Queens to come up and work on
17 it. They're dealing in reality. And then they're
18 plugging those numbers in and coming up with a
19 percentage.

20 It's the same thing that Stony Brook did.

21 And this is not novel. This is how this used
22 to work, which is why you saw goals all over the
23 place.

24 It's also worth noting, on federal projects
25 where you have DB goals, the goals are generally

1 less than 12.

2 And so you'll have -- you know, you'll have a
3 DOT lighting on any given day, where there's a
4 state-funded project at 30. There's a
5 federally-funded project which may be the same exact
6 type of work, which is 9.

7 So I think the analysis makes a lot of sense.

8 And that's, again, how it used to be done
9 before the agencies were told: Go ahead and do
10 that. Just make sure the number's 30.

11 Which is what that ESD --

12 SENATOR PHILLIPS: Is it a standardized form?

13 MIKE ELMENDORF: There's different --
14 different agencies use different forms.

15 SENATOR PHILLIPS: Okay.

16 MIKE ELMENDORF: We've not had much success
17 in getting that information from sort of the
18 mainline agencies, in part, because I don't think
19 many of them are doing it anymore.

20 And, again, I understand why.

21 You know, we've had a little bit more
22 transparency from some of the SUNY entities, but,
23 again, you've seen the results still be 30 percent
24 despite that analysis.

25 SENATOR PHILLIPS: And one last question.

1 So you mentioned "build capacity" several
2 times, and I think that's really one of our goals,
3 is to build capacity.

4 You mentioned this mentor-protege program.

5 You mentioned that you had done a seminar
6 with 30 potential MWBEs, to teach them how to bid.

7 Are there any other ideas? change?

8 MIKE ELMENDORF: Well, we used to do it
9 before.

10 SENATOR PHILLIPS: Yeah.

11 MIKE ELMENDORF: New York had a very
12 successful program that did exactly this, The
13 Alliance of Majority and Minority Contractors. And
14 so we think we need to get back to that.

15 And we're sort of on a small level, because
16 we only have the resources that we have, trying to
17 do that on a pilot basis here with what we're doing
18 with Schenectady and AMENY and Schenectady Community
19 College.

20 But that's something that we'd like to see go
21 statewide.

22 We're going to do as much as we can on our
23 own in the absence of the State, but this needs to
24 be an issue where the State and the Administration
25 and Legislature take leadership.

1 The Administration has talked about the fact
2 that there's going to be a mentor-protege program.
3 That was a few years ago.

4 We haven't seen it.

5 We wrote to the Governor, AGC and AMENY,
6 several years ago, and talked about many of the
7 issues that I outlined in my testimony as ways to
8 make this program better.

9 We haven't seen anything come of that.

10 But we think that, really, getting back to
11 mentorship, getting back to building capacity, and
12 it starts with building workforce. It starts with
13 bringing people into the trades, into the industry.

14 That's where contractors come from.

15 That's how we're going to grow this industry,
16 grow diversity, and, frankly, hopefully, in the
17 future, have less need for goals, because you're
18 going to have folks out there succeeding in the
19 industry without them.

20 SENATOR PHILLIPS: Thank you.

21 MIKE ELMENDORF: Okay.

22 Senator Serino, and then we'll have
23 Senator Sanders close, and we'll move on to the next
24 speaker.

25 SENATOR SERINO: Okay. Thank you.

1 And thanks, Mike, for being here.

2 MIKE ELMENDORF: Thank you, Senator.

3 SENATOR SERINO: I'm very supportive, of
4 course, of the program. But I really worry because
5 of all the constant complaints, just like everyone
6 else, that our offices are receiving. And Betty had
7 mentioned some of them.

8 The MWB lists are not -- that are published
9 are not accurate, but the contractors are held to
10 them.

11 Certification process.

12 The inheriting, the son and daughter, I had
13 that issue happen. And then they were able to
14 straighten out what they needed to straighten out,
15 but were told that they had to appeal the case.

16 And then when I spoke to somebody at MWBE,
17 they said, Oh, well, we win 98 percent of our
18 appeals.

19 So, right away, you already gave my girl
20 wrong information.

21 And then the other thing was the three-year
22 certification. I was told that they're, like,
23 14 months behind.

24 So, really, you have to tell somebody when
25 they're a year and a half in, that they -- and

1 I don't know if you covered that, I apologize for
2 being late.

3 And then another big problem that we have is,
4 we don't have a point person for, like, a regional
5 point person.

6 So right now, our office, for -- somebody is
7 waiting, I think it's three weeks for a point person
8 to connect on a denial and a recertification.

9 So, those are the some of the issues that I'm
10 having, and I'm sure they're quite similar with my
11 colleagues.

12 MIKE ELMENDORF: And we hear it all over the
13 state as well.

14 And it's -- certainly, it's a frustration for
15 those firms, obviously.

16 But it's a frustration for us, because,
17 again, that -- that either bottleneck of people
18 getting into the program, or people coming off the
19 program, for reasons that are hard to understand,
20 makes efforts to be able to meet the goals more
21 challenging.

22 But there's other -- you know, there are
23 other problems with the list too.

24 There's people on the list that aren't there
25 anymore. That -- they're not in business anymore.

1 SENATOR SERINO: Right.

2 MIKE ELMENDORF: There are a lot of firms
3 that are certified to work statewide, that don't
4 work statewide.

5 And we've told our members -- because when
6 they're certified to work statewide, that impacts
7 capacity.

8 If you have a masonry subcontractor that says
9 that they will work anywhere in New York, the person
10 in any of your districts, when they have a project,
11 should be calling them.

12 SENATOR SERINO: Uh-huh.

13 MIKE ELMENDORF: Except, then they say,
14 I don't go there. I only work here.

15 Which I guess makes more sense than doing it
16 everywhere.

17 And so we've told our members, when you see
18 that, tell us, and send to it Empire State
19 Development.

20 And we do the same thing, because they should
21 be cleaning up that list.

22 We don't see that happen, because that
23 would -- that would change the capacity calculation,
24 especially if you're actually setting the goal
25 correctly.

1 So there's a lot that needs to be done there.

2 I think it's both improving the process, and
3 I think, clearly, they need -- they need to have
4 additional resources, or something, because it's
5 just -- it just becomes a moras over there.

6 SENATOR SERINO: And then the other -- the
7 last thing:

8 One of my contractors had mentioned this
9 "60 percent supplier" rule raises the 30 percent
10 percentage and forces them to only get a 60 percent
11 value --

12 MIKE ELMENDORF: Yeah, that -- so --

13 SENATOR SERINO: -- in the comment that he
14 made.

15 MIKE ELMENDORF: -- and that's -- that is a
16 big problem.

17 And that occurred, I think it was two or
18 three years ago, Empire State Development made a
19 change in how you can take credit for utilizing a
20 supplier, and also a big change in the credit you
21 can take for utilizing a broker, which, by the way,
22 constitutes most of the certified firms in
23 construction.

24 So if you're buying material from a supplier,
25 and, you know, it's a million dollars, you get

1 credit for 60 percent of that million, not the full
2 million.

3 SENATOR SERINO: Right?

4 MIKE ELMENDORF: If you are buying something
5 from a broker, so not somebody that has a yard and
6 has all the stuff and stocks it; but, rather,
7 somebody that you call up and you say, I need X, Y,
8 Z material, they call somebody else, and they get a
9 number on X, Y, Z material, and then they mark it up
10 because they're a supplier.

11 It's legitimate, but now you can only take
12 credit for their commission, their markup, which may
13 only be a few percent.

14 So you have discounted by either 60 percent,
15 or, in some cases, more than 90 percent, the value
16 of utilization. And it's a numbers game.

17 Utilization is a dollar value on your
18 contract that you can take credit for for most of
19 the certified firms.

20 And when this happened, we -- they talked to
21 the industry about it.

22 And we said, Well, I assume you're going to
23 adjust the goals, then, right, because you have
24 discounted, dramatically, the ability to claim
25 utilization.

1 And the answer was, no, because -- and it was
2 really puzzling -- we think -- because there will be
3 more subcontractors now.

4 Oh, of course, they'll just appear. They'll
5 just magically appear out of, I don't know where.

6 It -- it -- it has made this much more
7 troubling.

8 SENATOR SERINO: Yes.

9 MIKE ELMENDORF: And to your point, when you
10 look at that map, it has increased the goal.

11 And then you look at DOT contracts, where
12 contractors are required to self-perform a certain
13 percentage of the contract, it makes the -- it makes
14 the value of that goal even higher because it's a
15 goal based on the proportion of the work that they
16 can subcontract out to somebody else, not the whole
17 contract value.

18 SENATOR SERINO: Sure.

19 Well, thank you; thanks, Mike.

20 SENATOR AKSHAR: Senator Sanders, would you
21 yield to Senator Helming?

22 SENATOR SANDERS: Absolutely.

23 SENATOR AKSHAR: Thank you.

24 Senator Helming.

25 SENATOR HELMING: Thank you.

1 SENATOR AKSHAR: Thank you.

2 SENATOR HELMING: Mike, I just want say,
3 thank you.

4 You have covered so much material, a lot of
5 what I've heard about from many of the businesses in
6 my community.

7 I just quickly wanted to point out:

8 We talked a lot about the certification
9 process: Just put it out there.

10 And you know this already, but the
11 recertification is just as challenging, and it's
12 just as difficult.

13 And to me, that's extremely frustrating,
14 after a company has gone through the certification
15 process, obtained certification, and then they try
16 to go for their recert, it's crazy that it takes
17 forever; you can't get clear answers or guidance.

18 So I don't want to lose sight of that.

19 Also, I'm glad that you mentioned local
20 governments and schools, and the potential impacts
21 this MWBE program has on those projects.

22 I know, as a town supervisor, I did a large
23 sewer project. And just the impacts of trying to
24 help our contractor meet the MWBE requirements, and
25 get those waivers in place, and then being worried

1 about, you know, being in compliance with your tax
2 cap, I mean, there's just a lot of moving parts and
3 pieces that you have to track.

4 So anything we could do to simplify that.

5 Again, I'm just glad you mentioned local
6 government and schools.

7 And, also, one of the biggest challenges
8 I think is that provisional approval.

9 So I want to thank you for bringing up that
10 detail.

11 It's something else that I don't want to lose
12 sight of, because who in this day and age can afford
13 to continue on a job under a "provisional" approval?

14 I mean, you get to the end of a job -- I just
15 had a company come up to me, and they've thrown in
16 the towel. They said, Fine.

17 They're taking what they can get from
18 New York State for a job because they had
19 provisional approval, and at the end, it was almost
20 a year after the project was completed, the State
21 came back and said, Well, you didn't meet this
22 portion of the goal.

23 So the company is done battling. They're
24 just going to eat that cost.

25 And that should never happen.

1 We're here to drive business in New York
2 State, to help business owners.

3 So those are just a couple of details I want
4 to make sure that, as we move along, we continue to
5 focus on as well.

6 MIKE ELMENDORF: Yeah, and, Senator, if
7 I could, one point on the local piece.

8 It's not just the cost that would be a
9 challenge, but it's the control, because under what
10 was proposed by the Governor, the State would decide
11 what the goal is on the local project.

12 And the State would decide, presumably, based
13 on how they put it out, when a good-faith effort was
14 made to meet the goal.

15 So the State would decide when a school
16 district or local government could proceed with
17 their procurement.

18 That clearly doesn't work for local
19 governments. It especially doesn't for school
20 districts who are very schedule-focused on their
21 capital projects.

22 And it's just a huge, new unfunded mandate,
23 it would be, on local governments, and a big shift
24 in control away from local entities of their own
25 business.

1 SENATOR SERINO: Thank you.

2 SENATOR AKSHAR: Senator Sanders.

3 SENATOR SANDERS: Mr. Chair, I would be less
4 of a politician if I didn't take a second to crow.

5 I've heard the New York City model mentioned
6 several times in the conversation. And I -- well,
7 I -- I have to admit that I'm the father of those in
8 New York City. I did Local 01 and Local 0129.

9 However, there are some differences, very
10 important differences, here.

11 I did not do it alone.

12 Two of the parents of local law -- of the
13 local laws are sitting in the audience; of course,
14 Ms. Wilkerson and Mr. Coletti.

15 Both of these people gave me advice.

16 Whether I followed all of it is -- we can
17 argue.

18 But both -- it was a different process, how
19 it was done in New York City.

20 It was more -- the legislature did it more
21 than the executive branch, so we were able to take
22 in -- other positions into account.

23 I did not get every thing that I wanted in
24 that; however, no one did.

25 And I guess that's a sign of good government,

1 if you wish, where everyone came out of there saying
2 that they could live with it, that it's better than,
3 or, whatever.

4 Now, I would have to also alert you that
5 I interviewed the top six companies in the nation on
6 MWBE. And I chose Mason Tillman because they have
7 never been overturned in court, by anyone.

8 Now, you can always -- as a contractor, you
9 can always turn in a product and the people don't
10 want to accept it.

11 That's a different point.

12 And they may accept it for many different
13 reasons.

14 You know, I may decide that I don't like it
15 because you didn't put my name first, or whatever
16 the -- whatever the issues are.

17 So there are reasons why things may be.

18 But in terms of courts themselves, these guys
19 have never been overturned.

20 So to say that a study is flawed and we
21 should just get rid of it, let's -- let's slow down
22 there for a moment and look at this.

23 Now, I'm here for -- for a reason, sir; and
24 my reason is that I agree with many of the people on
25 both sides of this, that there are many things that

1 need to be improved here. That this is not the end
2 of a thing.

3 And, perhaps, if the Governor had spent a few
4 more minutes thinking of this or thinking of that,
5 he might have come up with something better.

6 And I think that it is our job to find this
7 "better," and that we should be bold enough to do
8 it.

9 And if there is some change in November, the
10 truth will still to be the truth.

11 If we are able to come up with what is true,
12 then regardless of November, December, whatever,
13 your findings should inform whoever is there.

14 If -- if we can talk of what is true, then we
15 should -- we should take this as saying, here is how
16 we make this program better.

17 Any of us can -- all of us should immediately
18 say:

19 Why does New York State have several forms,
20 when we should have one form?

21 Why are we -- why do -- why are we making
22 people go through all of that?

23 Why aren't they get paid faster?

24 Why is there a net worth?

25 Why are we doing several things?

1 Why aren't they getting the resources, so
2 that -- regional resources, where they don't have
3 to -- as much as we love New York City, they don't
4 have to come to New York City?

5 And I agree with you, if we do this, and we
6 can't find a way to get the local people working,
7 wherever these local people are, then we haven't --
8 then we failed somehow. We haven't done right.

9 Now, what these local people look like in
10 some places, they will be mostly women, and that is
11 fine. That's fair.

12 In other places it may be other things.

13 The 2017 census of New York State says that
14 women make up 51.4 percent of the population of
15 New York State, and so-called "minorities" make up
16 30.1 percent.

17 So if a fair society, if this was a fair --
18 let's imagine that that ends up with, I don't know,
19 that there's at least 60 percent of the population
20 of New York State that's either a woman or MWBE,
21 around 60 percent.

22 If we were in a fair, just, or neutral, or
23 whatever, we would expect 60 percent of the
24 businesses to be run this way.

25 That we don't have 60 percent of the

1 businesses says that there is a problem of one type
2 or another.

3 And as long as we realize that -- that bias
4 exists, racism exists, whatever we want to call it,
5 as long as we start with that as a premise, then we
6 can agree with the Supreme Court, a conservative
7 Supreme Court, they gave you the Croson decision, so
8 that there is something that we have to deal with.

9 Because, my brother, Mike, I just didn't get
10 the feeling from you that there was a problem.

11 It sounded like everything was neutral, and
12 the world was just a blank slate, and we all could
13 have just an even -- an even opportunity.

14 We're not there yet.

15 However, let's assume -- I'm going to assume
16 that you want to get there too. And that most of
17 the stuff that you're talking about, I actually --
18 don't quote me now -- but I actually agree with you.

19 MIKE ELMENDORF: (Indiscernible.)

20 [Laughter.]

21 SENATOR SANDERS: And I have to look at
22 myself later, but I actually agree with most of the
23 stuff you're saying.

24 So saying those things, I'm here to put a
25 further stamp, saying that the process that you have

1 initiated, that you've been bold enough to initiate,
2 is one that is worthy in New York State, one that
3 legislators are supposed to do.

4 This is our job.

5 And we have to inform the executive branch
6 that, here, God willing, we get to it, is a better
7 way, and we have to take what goes with it.

8 Thank you very much, Mr. Chair.

9 MIKE ELMENDORF: Again, I think it's all of
10 our hope that those who were invited today, that
11 maybe didn't show up, will, in fact, recognize that
12 this is -- there is a bunch of goodwill here on the
13 dais, and we want to get to that end.

14 And as we move forward and we travel the
15 state, more people will participate on both sides of
16 the issue.

17 I think that that will be beneficial to all
18 of us.

19 SENATOR SANDERS: Forgive me to say, that
20 I spoke to some of those people who did not come.

21 And, I don't know why -- maybe they're
22 watching the federal level -- people believe that
23 they're -- that we are polarized, and, therefore,
24 they wouldn't get a fair hearing.

25 I'm telling them that we are going to. This

1 will be a fair place for them to come.

2 So, you may not see them the first time, but
3 you will start seeing them come in.

4 I thank you for that, sir.

5 SENATOR AKSHAR: And we appreciate your work
6 on that.

7 Mike, thank you very much.

8 MIKE ELMENDORF: Thank you.

9 SENATOR AKSHAR: Go ahead, Mike. You have
10 something to say?

11 MIKE ELMENDORF: I hope not.

12 [Laughter.]

13 MIKE ELMENDORF: I bet you all do too.

14 [Laughter.]

15 MIKE ELMENDORF: Thank you.

16 SENATOR AKSHAR: Thank you very much; we
17 appreciate you.

18 We'll call Sandra Wilkin and Renee Sacks from
19 the Women Builders Council, please.

20 Okay. Sandra and Renee, if you want to
21 consolidate your testimony, rather than read it;
22 whatever you'd like to do, we're here to listen.

23 RENEE SACKS: Okay.

24 We did have -- let me introduce myself for a
25 moment, and then Sandra Wilkin.

1 And I -- we will consolidate.

2 We did prepare testimony for you, which you
3 have copies of. And we will depart from that a bit,
4 and we'll try to make, being respectful of your time
5 today, an efficient -- efficient comments.

6 So, good morning, Senator Boyle and
7 Senator Akshar and members of the Senate Committees
8 on Economic Development and Labor.

9 My name is Renee Sacks. I'm executive
10 director of the Women Builders Council.

11 And this morning I'm representing WBC board
12 who comprise many of the top corporate executive
13 women in the construction industry, as well as
14 leading women-owned construction contractors and
15 subcontractors.

16 So our focus is construction.

17 I'm also president of Sacks Communications,
18 which is not a construction company. I'm a WBE, and
19 I've been in business for over 33 years.

20 Let me just add something, and depart from
21 our testimony for a moment, about Women Builders
22 Council.

23 Women Builders Council was formed in 2004.
24 It started with a group of six women, solely WBEs,
25 who understood that they were not getting government

1 work.

2 Sandra Wilkin is one of them, and Sandra will
3 precede (sic) my comments.

4 And they organized to form WBC. And WBC has
5 grown to have several hundred members, a large
6 board, and it also represents both sides of the
7 table.

8 So it represents both heads -- not heads,
9 sorry. We're working on that.

10 It's leading women in the construction
11 industry, many of whom are also on the boards of the
12 BTA, the Subcontractor Trade Association, the
13 New York Electrical Contractors Association, and
14 other prime contractor associations.

15 So WBC is a bit bifurcated, and we respect
16 our board's -- our board's thinking on the issue of
17 MWB goal setting and participation, and how we
18 advance women.

19 This -- last year WBC initiated a new program
20 called "We for She."

21 And I tell you about that because, as our
22 colleague before, Mike Elmendorf, said -- or, talked
23 about it, and I think Senator Sanders mentioned it,
24 men are -- are -- if you look at all the boards of
25 all of the major construction corporations, not only

1 in New York State, but internationally, but more so
2 in the United States, you will find them to all be
3 White men.

4 And so the women that are on our board are
5 the women that are breaking those glass ceilings,
6 just the way the new chairman of the -- of
7 Wall Street is now a woman who started as an intern.

8 Our women are breaking those glass ceilings.

9 Last week we held an event, that two major
10 construction firms, I'll mention them,
11 Tishman Construction and AECOM, held to attract over
12 300 young women working, with three different
13 universities: City University, Columbia University,
14 Manhattan College, and I believe Pratt, four.

15 We attracted 300 young women who are looking
16 at moving into the field of construction, who are in
17 the engineering schools, who are in other areas of
18 the university.

19 So WBC, just in short, is an unusual group,
20 because it does look at the issues of MWB
21 development and growth -- of small-business growth,
22 because many of the companies that our board works
23 with are hired by them.

24 So they too understand the challenges of
25 getting the right contractors and subcontractors and

1 subconsultants and architects and engineers on the
2 projects.

3 Our board represents many of the mega
4 projects that are going on in New York today: The
5 Javits Center, Lendlease-Turner.

6 Some of those companies are the women members
7 of those companies, the leading women-member
8 companies, who are rising through the ranks on our
9 board.

10 So I want you to understand WBC.

11 So we take a consensus and a collaborative
12 approach to looking at the MWB program.

13 Let me say one other thing that's not in my
14 remarks.

15 I'm a WBE. I've been a WBE since I first
16 understood there were WBEs. Being in business for
17 33 years is quite a long time.

18 I came out of the university and I started my
19 business.

20 I continued to learn more and more about the
21 construction -- construction -- construction
22 industry, and how MWBEs can fairly and equitably
23 participate.

24 But I will tell you, also, although the focus
25 of today seems to be only on construction, because

1 that is the largest economic driver in New York
2 State, I urge to you consider the other areas, such
3 as communications.

4 Information technology, which is now growing
5 as a result of many of the agencies' leadership, in
6 terms of developing types of contracts that can take
7 IT companies and help them grow. It is one of the
8 fastest-growing groups of MWB areas that has
9 emerged, thanks to the Office of General Services,
10 and thanks to the universities, SUNY and CUNY, who
11 are now making contracts available to other smaller
12 companies, because it's really hard to compete with
13 Dell and Apple and IBM.

14 So if you're a small company, you need to get
15 a foothold with equal opportunity.

16 Let me try to go to my remarks in the
17 efficient -- or, more efficient.

18 So it's very fitting that you, really
19 representing economic development and labor, are
20 looking at the best way to create a strong pipeline
21 of opportunities for small and locally-based
22 businesses to do business with New York State.

23 And that's what this is about.

24 Senator Sanders, you said something before:
25 It's often a good time to take a breath and look at

1 where we are.

2 So, I looked at some facts.

3 I think you looked at some of the same facts
4 I looked at, but, I just want to talk about New York
5 for a minute.

6 2.1 million small businesses make up
7 90 percent of all of New York businesses.

8 2.1 million.

9 We only have, I think, about 8,000 certified
10 MWB firms.

11 More than 2 million small businesses in
12 New York, which is 7.2 percent of the national
13 total, are in every region, community, and
14 neighborhood of the state, making New York a great
15 place to live and operate a small business.

16 In 2016 there was 31.9 percent increase in
17 minority ownership of small businesses.

18 Senator Sanders, you alluded to that fact
19 before.

20 And that's an important distinction: The
21 face of small business is changing.

22 Women and minorities are coming to the fore
23 because our demographic is changing, not in every
24 part of the state, but it's beginning to change as
25 we move our infrastructure north.

1 Job creation is growing upstate, and, in
2 certain mid-state counties, even more than in
3 New York City and Long Island.

4 I hope we haven't lost Senator Boyle, because
5 that transformation of job creation in the northern
6 part, in the western part, in the Southern Tier, is
7 making a change.

8 I included in my written comments a tiny map,
9 which you probably can't read, but I can -- we can
10 send you to the source of that information, and you
11 can see, that even in the area of New York and
12 Long Island, there's change occurring throughout the
13 state in areas that we hadn't anticipated.

14 And what is happening in New York State is
15 really part of the economic development plan that
16 has been fueled by you in your districts.

17 You probably know the economic development
18 numbers of your counties, so don't get upset with me
19 because I did a quick study.

20 I pulled the certified companies that are
21 available in some of your counties to see what the
22 numbers looked like.

23 And, Senator Little, that hundred and --

24 SENATOR LITTLE: No, I have two economic
25 regions.

1 RENEE SACKS: I know.

2 I combined yours, you'll see on the next
3 page.

4 SENATOR LITTLE: I can see it. And --

5 RENEE SACKS: Yeah.

6 No, and I apologize if I didn't catch all of
7 it.

8 The intent of the capturing of this data was
9 to really look at these areas and see what you have.

10 As Senator Sanders said, take a breath and
11 see where you are.

12 There's a cry -- a hue and cry from many of
13 the prime contractors, many of those members are on
14 our board, that there is not enough capacity.

15 If you look, you find.

16 And you can find if you -- if you do do the
17 proper outreach and vetting, which is part of the
18 process.

19 And the criticisms of the ESD directory, I've
20 gone through them.

21 I can tell you I've searched, for example,
22 for electrical trades, for a large project.

23 I went through the directory.

24 I called, my office and I called, and I can
25 say I personally called, as part of an outreach

1 effort, we called over 600 electrical contractors.

2 Very hard to find electrical contractors who
3 wanted to bid on the work, because they feel if they
4 bid on the work, they're never going to get the
5 work.

6 Some of them are capable.

7 Some of them were union contractors,
8 I indicated before.

9 I also represent, do not represent them here,
10 the New York Electrical Contractors Association.
11 I have done that for a decade.

12 There is almost 28 percent of the New York
13 electrical contractors, union electrical
14 contractors, the large contractors, a third of them
15 are smaller MWBE union contractors.

16 And that number seems to be growing in the
17 other subcontracting associations.

18 I put together some numbers -- so,
19 Senator Boyle, thank you for returning -- and
20 I looked at the number of certified companies that
21 exist in your area, and the kind of work that's
22 occurring, and Long Island is a perfect area.

23 I know that your district may be more
24 contained, but there's over a thousand certified
25 MWBE contractors, just construction.

1 We're not looking, and you mentioned, someone
2 asked before, will food services do it?

3 Yeah, it will do it, because on a project,
4 for example, like the Long Island Railroad, we
5 recently did an outreach last year for the
6 Long Island Railroad, and attracted over
7 1100 companies who were interested in doing
8 business.

9 They didn't come from Detroit.

10 They came from Long Island, they came from
11 New York, they came from -- some came from the
12 Mid-Hudson Region, because they were looking at an
13 opportunity that was going to be a number of years
14 that could give them an opportunity to grow their
15 business.

16 You grow your business, and I'm a small
17 company with 10 people, one project at a time.

18 And part of what I do, is I also represent
19 Women Builders Council. It's part of my portfolio
20 of work.

21 So you have projects like LaGuardia Airport
22 redevelopment, and we could talk at length about
23 that.

24 Skanska is on our board.

25 Skanska is on my colleague's boards.

1 There are issues in how you find MWBEs and
2 the kind of work that you give them.

3 The new Kennedy Airport, MacArthur Airport,
4 the multi-billion-dollar Long Island road expansion,
5 and also the additional millions of dollars that are
6 going to downtown redevelopment, just in
7 Long Island.

8 And what actually excited me, and I should
9 know more, so I always say, and those who know me,
10 I always say, "I'm your biggest dummy."

11 If I don't know it, I bet there's a lot of
12 other people who don't know what I don't know.

13 And so as I began to look -- and this was
14 done just in a few hours, I began to look at the
15 other areas of New York State.

16 And I should know better, and I wish I had
17 the time as a small business, really, to search out
18 what is going on.

19 But I looked at your economic-development
20 plans that emerged from the regional economic
21 development councils that were initiated by
22 Governor Cuomo, and they were very exciting.

23 And I know that my colleague earlier
24 mentioned the fact that, you know, you have funding
25 from the federal government.

1 By the way, I'm a DBE. I got certified as a
2 DBE. And once upon a time, I did it just to see
3 what the certification process was like.

4 It's quite laborious.

5 I got a contract.

6 Immediately following by certification,
7 someone called me, and I got quite a nice contract
8 to do outreach for a DBE project.

9 So, I looked at the MWBEs, and I also
10 looked at the projects that you had in your
11 economic-development plans, which you are intimately
12 familiar with. Correct?

13 Yes?

14 Okay.

15 Because I wasn't.

16 I know some of them.

17 Some of them are smaller.

18 Not all of them are mega projects.

19 Some of them are smaller projects, but
20 they're good, solid projects.

21 They also require workforce components.

22 They require the hiring of minority and women
23 in many of the transportation projects.

24 And that is a big, big push.

25 There's a big drawback throughout New York

1 State on the apprenticeship programs that will allow
2 women and minorities.

3 And I know, as you traverse and go through
4 the state, you're going to be looking at workforce
5 development and ways that new jobs can be created.

6 But there are people who need jobs. There
7 are people who would travel hundreds of miles to
8 take some of the jobs that are on some of the major
9 roads throughout New York State.

10 And the contractors that are doing those jobs
11 are the ones that are responsible for finding
12 MWBEs, who will also hire these minorities,
13 because sometimes you hire what you look like.

14 But, for women, some of the jobs are more
15 challenging because they're in transportation.

16 So, Senator Akshar, in the Southern Tier,
17 I only found 147 certified MWBEs. And that was
18 just pulling down what was in the directory.

19 But you had close to \$70 million in --
20 awarded for 83 projects. So it sounds like those
21 are smaller projects if we do the division.

22 And the Southern Tier's Soaring was the work
23 that I looked at briefly, and it seems to be taking
24 off.

25 You would know better than I.

1 Senator Ritchie --

2 SENATOR AKSHAR: It's not Soaring.

3 RENEE SACKS: It's not Soaring.

4 I know, it's PR.

5 Why is -- I can't ask you why it's not
6 Soaring, but maybe we can have that discussion.

7 It's not Soaring for MWBs.

8 Is that what you meant?

9 SENATOR AKSHAR: Collect --

10 RENEE SACKS: Or it's not Soaring overall?

11 SENATOR AKSHAR: Yeah, collectively.

12 I'll let you continue.

13 RENEE SACKS: Collectively. Okay.

14 So I tried to look at who was here, because
15 what prompted my focus this morning for these
16 comments was the fact that there was a bill that
17 said that you were going to cap goals, if
18 I understood the bill properly, based on the
19 availability of MWBs in an area.

20 And when you cap a goal, when you tap -- when
21 you cap the goal based on whatever data you happen
22 to have at whatever time you happen to have it, you
23 close the door on opportunities.

24 I know that sounds very idealistic, but it's
25 very true.

1 When a door opens up to opportunity --

2 And if we had time, I could tell you the
3 story of my company, but I won't.

4 -- you really cap the ability to hire more
5 people and get more revenue.

6 And so when you say that small companies
7 sometimes don't have capacity because they may not
8 have enough people, if you give them a project and
9 you can finance them properly, and I think both the
10 State is looking to do that through their loan
11 program.

12 I will talk a bit later about the MTA
13 small-business mentor program, small-business
14 development program, which is really taking the lead
15 in terms of developing contractors with capacity.

16 And I don't mean to steal Michael Garner's
17 thunder on that.

18 I worked for Michael, and the program there
19 is really exemplary nationally, and for the state,
20 in terms of developing jobs.

21 But when you look at the fact that, in
22 North County and in Central New York, you have --
23 you have 475 certified MWBE contractors.

24 They need to be vetted, and I recognize that.

25 Senators Little and Amedore, in the capital

1 district and the region, there are 585 certified
2 MWBEs, and you had 85 million for 110 projects.

3 Senators Murphy and Serino, there were
4 836 certified MWBE contractors in the Mid-Hudson
5 Region, and 585 certified MWBE construction
6 contractors in the capital district. That's over
7 84.8 million awarded for 113 projects in 2017, based
8 on your economic-development data.

9 And, Senator Helming, there were
10 944 certified contractors, MWBE construction
11 contractors, when I combined everything.

12 Where are you?

13 There you are.

14 And there were \$217 million awarded for
15 289 projects.

16 And so the point of this was not to be
17 accurate to the dollar or to the number of MWBEs,
18 although that is based on the ESD directory.

19 It was to note that there are MWB firms that
20 employ others in your area, in your region, that
21 are, hopefully, taking advantage of the contracts.

22 So when someone says there's no capacity and
23 there's no MWBEs, it's a really easy thing to say,
24 they're not there.

25 But you do have to call, you do have to find

1 them.

2 If no one forced you to find them, you
3 wouldn't.

4 I'm a WBE. I have MWBE goals on my
5 contracts. When I get a contract, I self-perform,
6 and I must find MW -- MBEs to participate, so
7 I look and I interview.

8 My contracts are not multi-million, and
9 I give that to you as an example. They're small.
10 They could be 50,000, they could be a hundred, they
11 could be 200,000.

12 They average around there.

13 I have to share 15 percent with an MBE. And
14 when I train them, I sometimes find that they do an
15 equally better job than some of my team. And I have
16 a really good resource that's even more
17 cost-effective, and they're hiring people to do the
18 work.

19 So it does trickle down in that -- in that --
20 in that -- in that example.

21 So the project numbers speak for themselves
22 in terms of economic-development opportunities that
23 have been created in your districts and the
24 neighboring communities, because everyone says there
25 isn't enough work, but there is.

1 And I'm just going to go through this a
2 little faster.

3 SENATOR AKSHAR: And then we could hear from
4 Ms. Wilkin?

5 RENEE SACKS: Yes. I will stop talking.

6 SENATOR AKSHAR: Thank you.

7 RENEE SACKS: No problem.

8 I really do want you to understand, though,
9 that my comments were focused on the fact that
10 you're looking at capping goals by base -- by --
11 based on availability, which has not been defined
12 properly.

13 And so the disparity study, and I'm going to
14 just add that, and then I will -- if you'll permit
15 me, I will go to the next -- to Sandra, the
16 diversity -- I'm sorry -- the disparity study that
17 you mentioned, that you say you should redo again.

18 So for those of you who are familiar with
19 statistical analysis, statistical analysis is
20 somewhat redundant. It repeats itself. It gives
21 you predictive models that will happen over and over
22 again.

23 Today New York City is announcing a disparity
24 study.

25 I don't know all the results of it.

1 I did have a call with them last evening, and
2 I asked them, did it look like it was similar to
3 New York State?

4 Because the same population, many of those
5 MWBEs in New York City and New York State, are
6 being -- are being evaluated and looked at.

7 And they said yes.

8 And so I urge you to look at that before you
9 jump into another disparity study to find the same
10 data that you will continue to find.

11 With that, I will introduce Sandra Wilkin,
12 who's president of Bradford Construction, a
13 certified women-business enterprise since 1992, with
14 over 25 years of construction -- of managing
15 construction projects.

16 Sandra was co-founder of the Women Builders
17 Council, and she's a member of the Governor's MWBE
18 team.

19 She's a trustee for the City University of
20 New York, and one of the state's most passionate
21 advocates for MWBEs, and a respected member of our
22 construction community and Women Builders Council.

23 Sandra.

24 SANDRA WILKIN: Thank you, Renee.

25 And thank you, Senators and Chair people.

1 Just by way of what Renee had mentioned, as
2 far as an economic agenda for New York State, and
3 address what we all need to consider as how you
4 decide to shape and advance the current New York
5 State MWBE programs over the next several years,
6 just as a point: We all need to work together.

7 MWBE firms are willing, able, and available
8 to participate in public procurement.

9 The current MWBE programs give businesses an
10 opportunity to enter the market where access was
11 limited or didn't exist at all.

12 Our current disparity study demonstrates
13 there is capacity. Although it may appear uneven
14 throughout the state, it can be supported to grow
15 and thrive.

16 Your decision to reauthorize Article 15-A,
17 and refine and advance its power within New York
18 State, hold the fate of families, business owners,
19 and communities you represent.

20 And, yes, today we have a great opportunity
21 to work together to create, in our case, a strong
22 construction industry, and one that builds capacity
23 and profitability for the participating companies,
24 large and small, and a better New York for everyone.

25 We want to encourage the Article 15-A to be,

1 at best, another five years, to work together, for
2 best practices in our industry, and to keep the
3 economic-development force for New York State.

4 And we do need to grow small businesses in
5 New York State.

6 And during this business with government, it
7 is truly, as we know, a very complex matter of both
8 public and private sectors, but big business has
9 learned the ropes.

10 Now it's time to pass the ropes to smaller,
11 locally-based, and diverse businesses who can grow
12 with experience and opportunity.

13 One key area that was discussed is "how to."

14 And we have known throughout the years in
15 being a WBE and providing technical assistance,
16 having mentor programs within the various agencies
17 is something that would be very, very helpful,
18 especially the technical assistance in learning how
19 to do work, especially in pre-apprentice programs;
20 to consider support, with both community colleges
21 and the students who want to become next-generation
22 construction-industry business enterprises.

23 And that, in fact, that the legislation does
24 allow us to grow -- excuse me -- the new businesses.
25 And it is also to undertake great responsibilities

1 for direction with New York State, and most
2 successful, with MWBE programs.

3 Just to highlight, I've been with
4 Senator Sanders, both on -- at the city council
5 level when we embarked on our very, very first
6 disparity study for New York City.

7 It wasn't perfect, but it really started the
8 opportunities that weren't out there.

9 One of the efforts that were done, with an
10 unintended consequence, was having a million-dollar
11 cap, because the thought was, at the time, these are
12 small firms, and the cap would be sufficient in
13 terms of them doing business.

14 It turned out to be a deterrent, and
15 businesses were turned away.

16 At that time, unfortunately, there were no
17 goals for women. There were zero goals for
18 women-business enterprises.

19 And it took the Senator here, then with the
20 city council, and many of the associations in
21 New York, to realize that we had to change the
22 legislation that was there.

23 We converted that to Local Law 1.

24 As a result of that, we now have, in New York
25 City, and in New York under 15-A, probably the most

1 comprehensive and the most competitive MWBE program
2 around the country.

3 It still needs -- it's work; it still needs
4 to be tooled and to be built up.

5 But to suggest that the program, in effect,
6 is not working would be difficult to say in the eyes
7 of the economic development for many, many of the
8 women-owned businesses and minority-owned businesses
9 throughout the country.

10 And to suggest that we, together, and the
11 Senators here, we can figure out how best to move
12 the programs forward, it's something that probably
13 excites a lot of people in the state, in the sense
14 of the economic improvement that we can make in so
15 many people's lives.

16 And to get access and opportunity is just not
17 easy as a woman-owned business.

18 I've been doing it for over 25 years, and
19 realize the impediments that you face, whether it's
20 trying to get a bank loan, trying to get insurance,
21 making sure that the firms that are in the program
22 are women and minority businesses.

23 That's an issue in itself.

24 So it's a matter of us all coming together to
25 find out how best to move this forward.

1 Thank you.

2 SENATOR RITCHIE: I've got some questions.

3 SENATOR AKSHAR: Senator Ritchie.

4 SENATOR RITCHIE: First a comment, and then a
5 couple questions.

6 The comment about the disparity study, and,
7 you know, I understand that some may be more
8 accepting of what came from the disparity study.

9 I'm not saying for me that I wouldn't be.

10 The issue is, the data was asked for, so we
11 could actually see how the results were tabulated.
12 And we haven't gotten any of the data.

13 So it's kind of hard for me to buy into the
14 disparity study when we can't look at how the
15 results were come up with.

16 So if -- if, you know, you have any influence
17 on making that data to come out to support your
18 feelings on the disparity study, that would be
19 helpful for me.

20 Can you just tell me, do you have any members
21 in -- in your membership that are located in the
22 North County?

23 RENEE SACKS: No.

24 But we've gotten inquiries from several --
25 two or three companies that have reached out to

1 Women Builders Council that are women.

2 We also have spoken to women up -- I'm not
3 sure if they're in the North County or not, but
4 they're outside of the Mid-Hudson Region, the lower
5 New York region, where most of our members are from,
6 because the organization is not a large
7 organization, and it's a self-funded organization.

8 So the kinds of questions that we're getting
9 from some of the companies there were related to
10 personal net worth. And there was concern, also, if
11 personal net worth were removed, if the cap were
12 removed, that they would have no opportunity to bid
13 on projects because they would be too small.

14 So we do have a sampling of some of that, and
15 WBC does have a position on personal net worth.

16 Originally, we had looked at it, and some of
17 our board members said, let's remove it.

18 We recognize now that personal net worth does
19 need to be in place. It needs to be realistic,
20 though, across different markets, based on other
21 factors.

22 So a construction company's personal net
23 worth may need to be higher than a communications
24 company, or other types of companies that are in a
25 particular market sector, in order to compete.

1 Because of factors, which I'm sure you're
2 aware of, based on ability to secure a loan, that's
3 based on your revenue and ability to secure bonding,
4 which they look at your revenue, but they're looking
5 at other things.

6 And so the personal net worth issue is one
7 that we feel we're flexible on, and needs to be
8 looked at.

9 We do think that the 3.9 million, I think
10 it's gone up now with the cost-of-index inflation,
11 is really too low.

12 And the fact that it would be set by ESD, our
13 board also manifested some question: Well, what
14 factors would you use to determine that?

15 One of our other board members, Amy Criss
16 from 84 Lumber, and I don't mean to steal her
17 thunder, is here, and will talk to that a bit later.

18 And she has an excellent suggestion for
19 allowing companies that may have graduated out of
20 the program to actually become mentor and supporters
21 of smaller companies, and make that regulated so
22 that it's not just arbitrary.

23 It's not hundreds of companies.

24 Many of the companies that are graduated, or
25 are getting ready to graduate out of the program,

1 because of personal net worth, are doing so just at
2 the -- it's a tipping point.

3 If they actually graduate, they may be out of
4 business if they graduate.

5 So that's a problem, in construction in
6 particular.

7 SENATOR RITCHIE: Okay. That was one of my
8 questions, because you did mention that one of your
9 members was working on The Javits Center.

10 RENEE SACKS: Uh, yes, yes.

11 SENATOR RITCHIE: And I was just wondering
12 how they were able to participate in that kind of
13 project without getting into the net worth issue.

14 RENEE SACKS: Well, that's interesting that
15 you ask.

16 So The Javits Center is a joint venture of
17 Lendlease-Turner, two of our board members. One
18 comes from Lendlease, one from Turner Construction
19 Company. And they have done extensive outreach to
20 find MWBs.

21 Other board members are participating with
22 contracts. One could be a finishing contract, or,
23 wall and ceiling, and they're getting contracts.

24 So in construction, construction is --

25 And I don't want to speak to construction.

1 Sandra, you probably should.

2 -- it's profitable, but it's not as
3 profitable as you think. Because of the time that
4 it takes to get paid and have cash flow flow through
5 a company, it doesn't necessarily end up in your
6 bank, in your personal bank, and increase your
7 personal net worth. And it's about how companies
8 are also characterizing themselves.

9 So while I can't speak to that specifically,
10 the companies that are getting contracts throughout
11 the large mega projects, the LaGuardia
12 development, are not suddenly jumping out in
13 personal net worth.

14 The money is remaining in the business, and
15 so it doesn't impact their personal net worth.

16 And a smart business person can negotiate
17 that so that they remain within the program.

18 Sandra.

19 SANDRA WILKIN: In -- in particular, you see
20 firms throughout New York, depending on where the
21 project is -- in particular, you mentioned
22 The Javits Center -- there should be firms, and we
23 should encourage throughout New York State, to see
24 that there are minority- and women-owned firms to be
25 able to have the opportunity to bid on that.

1 And as a result of these large projects, they
2 should go out to other areas of the state, and make
3 sure that these firms are one -- or, have the
4 ability to do the work.

5 And that brings us to growing and -- growing
6 the capacity of the firms, and to be able to have
7 access to bonding, access to being able to have the
8 kind of labor that they would need for those -- for
9 those projects.

10 It is out there.

11 And once again, it is to encourage women, in
12 our case, for women builders, to grow women builders
13 throughout New York State.

14 SENATOR RITCHIE: So I'm certainly supportive
15 of growing women builders.

16 But, once again, we're back to talking about
17 going out to other areas.

18 And I know you made a comment earlier that --
19 that there was a lot of work in the North County
20 from what you have in your testimony here?

21 RENEE SACKS: Well, there is work there.

22 There's also transportation work.

23 So what I simply looked at was what available
24 to me quickly. And I looked at your
25 economic-development forecast for the regional

1 economic development council.

2 There are other projects that the New York
3 State Department of Transportation is doing in that
4 area. And for those projects, it's often hard to
5 locate MWBs to participate in them.

6 But the MWBs are there.

7 The question is: The contractor raises a
8 hand and says, "I can't find them."

9 I know that for a fact, because they also
10 raise their hand and say they can't find minority
11 and women to be part of the workforce.

12 And because many of those projects are
13 federally funded, there are requirements to have
14 minority and women, there are certain numbers.

15 New York State Department of Transportation
16 has made very aggressive efforts, they're trying
17 very hard.

18 And so I will -- and I don't mean to be rude
19 at all, but, I called a local union for an
20 apprentice job, because I wanted to do that in
21 New York State, in Upstate New York.

22 I don't recall the exact area. It was one of
23 the regions that I was looking at in terms their
24 apprentice program for a study that I was doing.

25 And I called, and no one answered the phone.

1 And there was a posting on the department of
2 labor website that gave you five days for the
3 posting of availability.

4 Apprentice -- five apprentices were
5 available.

6 So there's really not an easy the way to
7 access an opportunity to grow.

8 One of the things WBC has recommended is
9 pre-apprenticeship programs, to be able to fuel
10 new -- new -- new talent into the industry, because,
11 over the next decade, there isn't a pipeline to new
12 talent.

13 Women are one piece of it, and we're doing
14 that through Women Builders Council. But it doesn't
15 seem to be happening elsewhere.

16 The union, unions are working hard in the
17 apprentice programs. They've opened their doors
18 wider to those that are different to minority and
19 women, but there's only a handful of women in all of
20 those apprentice programs.

21 There are few in the carpenters, but they're
22 very few.

23 There's a few in the electrical industry, but
24 they're few elsewhere.

25 It is an industry that needs a rebranding so

1 that people will come into the industry.

2 But the State can develop community college
3 programs, high school programs, pre-apprentice
4 training programs, and begin to educate a new -- a
5 new pipeline of labor to get in there.

6 And what happens to labor?

7 If you're really good at what you do, you end
8 up starting your company.

9 And if you start a company, then you begin to
10 grow if you get projects, if you get a small
11 project.

12 No one can hand you a large project and
13 expect a small company to do it.

14 So the projects need to be right-sized.

15 And I will say that -- and I mentioned the
16 MTA because the MTA has over 400 companies -- the
17 program is now in its eighth year, and the program
18 has graduated some people out of it.

19 These companies are now getting contracts.

20 They're construction companies.

21 They weren't in transportation.

22 They've learned the transportation industry.

23 They learned how to do business with the
24 agency.

25 And that's complicated.

1 Doing business with the MTA is very, very
2 complicated, the forms.

3 I continue to learn about it.

4 It's very, very difficult.

5 So the forms need to be managed.

6 Documentation needs to be managed.

7 Rules need to be followed.

8 Safety needs to be followed.

9 And so these smaller companies need, what
10 Sandra spoke about before, a mentoring program, or a
11 mentoring system, that could help small companies.

12 I mentioned before --

13 And I know you're looking at the time. I'm
14 sorry. I'm very sensitive to that.

15 -- that it's very hard to find a capable
16 company.

17 I look at some of the construction companies
18 that I work with. Some of them have really grown
19 immeasurably over the last several years because of
20 the training provided by certain agencies, and,
21 also, the potential training that could be provided
22 by companies, by subcontractors and contractors, who
23 could have mentor-protege programs within their --
24 within their portfolio; however, they're not
25 permitted to.

1 Construction is very complicated.

2 There's something called "commercially useful
3 function," and that is, you cannot help an MWB do
4 something that they should do by themselves. You
5 cannot provide that assistance.

6 And as a result of it, there are historical
7 practices that impede MWBEs succeeding on a job.

8 I will give an example from our president who
9 could not be here today, Deborah Bradley.

10 She was on the Tappan Zee Bridge project.
11 She needed a crane.

12 There was a crane on the project.

13 She could not rent the crane. She could not
14 borrow the crane.

15 She had to lease her own crane, bring the
16 crane in for a day, endure the cost, pass the cost
17 along to the State, because that -- it was a -- you
18 know, it was a government project, and have the
19 crane.

20 And that particular example on commercially
21 useful function, and I'm not the right person to
22 know all the intricacies, our board members do,
23 needs to be looked at.

24 So mentor-protege programs which are, from
25 the federal level, approved through a special

1 agreement. DBE provides for that. A disadvantaged
2 business enterprise can have that mentor-protege
3 program. You have a written arrangement between the
4 mentor and the mentee.

5 That does not exist in New York State.

6 And so many of the larger companies can't
7 even help the smaller MWBs.

8 And this runs across -- it gets complicated.

9 It runs across many of the different industry
10 areas; for example, construction management.

11 If I'm a construction manager and I'm an
12 MWBE, I really can't use your computers and your
13 drawings at your site, because I would be -- I would
14 be getting assistance from you.

15 And that is one of the -- right, that is one
16 of the issues?

17 SANDRA WILKIN: Well, it's one of the --
18 right.

19 RENEE SACKS: It's one of the issues that
20 some of the companies are dealing with, so they
21 don't compromise commercially useful function, which
22 is legally sanctionable.

23 SENATOR RITCHIE: Okay. So that might adding
24 into one of the other issues we're having in the
25 North County, because the list is not updated, and

1 when contractors are out trying to find businesses
2 to qualify, many of them, they're not in business
3 anymore.

4 And for some of them, one instance, it was a
5 state project, where they had to find somebody. And
6 they ended up with an asbestos company because that
7 was the only one that qualified.

8 And, apparently, they had talked to many
9 people who had dealt with this company, and were
10 told that they aren't going to be able to finish the
11 job.

12 And that's exactly what happened to a
13 detriment of the State project.

14 So, you know, I appreciate the fact that you
15 talked about vetting them, and that there needs to
16 be an apprenticeship program.

17 And maybe that's what we should be looking
18 at, ways to allow the small companies in my area to
19 have the expertise coming in, because many, I think,
20 that are on the list that you looked at are not
21 operational, can't handle the job, so it's kind of
22 skewing the numbers a little bit.

23 RENEE SACKS: No, I understand that.

24 But if you don't create a focus of
25 opportunity in your area, where you are providing

1 technical assistance, where you are providing job
2 opportunities, if I was a construction company,
3 maybe in the North County, and I couldn't get any
4 work, I would begin to do other things.

5 And that has happened.

6 When I reached out to 500 electrical
7 contractors in New York, from the directory, that
8 were located in New York City, and some were located
9 outside, I took them out because I didn't think they
10 traveled to work on that particular project, I found
11 that many of them didn't want to even try. And
12 many -- there were some that didn't update their
13 profiles in the ESD directory.

14 Let me say something to the defense of ESD,
15 through something called "The New York State
16 Contract Reporter."

17 And The New York State Contract Reporter
18 e-mails me all the time, so I assume they e-mail
19 the other MWBs that are in that directory, to update
20 their address, their profile. They do it annually,
21 and I do it.

22 Yes, it's complicated.

23 I have to go in and do it.

24 I have to remember my password and my user
25 ID, and I have to go back in, and it's different.

1 The user ID and password isn't the same for
2 everything else I'm doing with ESD.

3 It is a complicated system.

4 But without some complexity, and without some
5 rigor and control, you really don't have anything.

6 Then you have shell companies trying to
7 become involved in government procurement.

8 And so we've gone from, where once I went to
9 Washington and someone said "five companies build
10 the world," and they do, because many of the
11 companies that we're even talking about are owned by
12 other companies that are internationally based.

13 And now we have smaller companies that are
14 actually becoming successes. They're becoming
15 five-, ten-, fifteen-, twenty-million-dollar firms
16 in the construction industry.

17 Not always in the other industries, but in
18 the construction industry, they are growing, they
19 are hiring hundreds of people. And they have an
20 opportunity to grow, and also to train others.

21 I don't know how to respond to you when you
22 don't have availability in a particular area.

23 Then you need to look at the problem of:

24 How do you great create that availability?

25 How do you create those programs?

1 And how do you get companies?

2 Companies will go where there's
3 opportunities.

4 I'm New York-based. I also work on
5 Long Island.

6 Will I go to Westchester? Yes.

7 I've been asked to go to Baltimore.

8 I've been asked to go to New Jersey.

9 Need bandwidth to do that.

10 And so, as a small company, I run a business
11 and I make payroll. And I'm giving that you side of
12 me because I think it's important for you to
13 consider that.

14 Companies, if they have an opportunity, will
15 grow.

16 If you cut the opportunity, there is no place
17 for them to grow, and they will just redirect
18 inward, take private work if they can compete.

19 Let me say one last thing that was in my
20 testimony. I didn't think I read it.

21 The companies that are now public -- working
22 for public works in the -- in -- primarily, in the
23 union area, if that work dried up, it would be very
24 difficult for those companies to continue tomorrow.
25 They wouldn't have work if those government

1 contracts weren't there.

2 And so the government procurement is very,
3 very important for creating new companies. Those
4 companies are going on and growing to do private
5 work.

6 I hope I answered your question, but I know
7 it's a dilemma.

8 SENATOR RITCHIE: Thank you.

9 SENATOR AKSHAR: Ms. Sacks, when you -- you
10 spoke several times about cap; we're trying to cap
11 the amount of MWBEs.

12 What did you mean specifically?

13 RENEE SACKS: Specifically that, if you
14 develop goals.

15 So if you develop a goal, and you say there's
16 only a 10 percent goal in an area because, based on
17 availability, there's only -- I don't know -- I'm
18 not sure what we're basing any cap, any limit, on a
19 goal.

20 SENATOR AKSHAR: Who's trying --

21 RENEE SACKS: So --

22 SENATOR AKSHAR: Who's trying to cap it,
23 though?

24 RENEE SACKS: I thought that that was part of
25 one of the bills that had been circulated.

1 If that is my error, I could look --

2 SANDRA WILKIN: When we talk -- no.

3 SENATOR AKSHAR: I'm sorry?

4 SANDRA WILKIN: Just to inform you on the
5 cap, we talked about a cap, as an example, with the
6 Local Law 129 with New York City.

7 It was -- it's the -- one of the requirements
8 were that the contracts were under a million
9 dollars.

10 Therefore, in order to make the goal, you
11 would only be allowed, as a -- to provide for goals
12 for contracts that were under a million dollars.

13 That re -- when the City realized that
14 that was an impediment to growing companies in --
15 six years later, they then changed it where there is
16 no cap for the projects.

17 So you can bid on any contract with --
18 depending on your abilities, obviously.

19 Here, I think that New York State does not
20 have a cap for those, which is an important thing to
21 note.

22 But the sense of having only limit the
23 MWBEs to a specific region, perhaps, to us, it
24 seemed very similar, going down and having that same
25 kind of concept, or methodology, in saying, well,

1 you can limit the firms only to do business as an
2 M/WBE within your region, let's say. And that would
3 limiting if a firm has an ability to do work in
4 another county, or a nearby county.

5 So to the whole purpose of these programs is
6 to grow the businesses. And in order to do that,
7 the opportunities have to exist in measurable
8 points, in that they're within New York State,
9 because of the services that one can have, rather
10 than just limit it to a specific region of that
11 locality.

12 RENE SACKS: I was referring to one of the
13 bills, and I'm not remembering a number that had
14 been -- there have been a flurry of bills.

15 And so one of the bills indicated that the
16 goal would be capped based on availability for a
17 particular project or area.

18 Am I correct on that?

19 SENATOR AKSHAR: Yes, so I just want to make
20 it clear that the piece of legislation that
21 Senator Sanders and I debated a couple of weeks ago
22 was not -- we weren't capping movement or
23 restricting movement for one to work.

24 We were simply saying, the Governor's come up
25 with this arbitrator number of 30. Right? This is

1 something that we discussed.

2 We're all talking about growing capacity.

3 What I was arguing in the legislation was
4 that, based on -- based on the capacity of that
5 region, that's what we should -- that's what we
6 should be using.

7 Now, as I said to Senator Sanders during our
8 discussion, if it was 14 percent, and we really
9 wanted to get to 30, maybe ESD would do a better job
10 of growing capacity in certifying MWBEs so we
11 could get to that number.

12 So, I certainly wasn't trying to restrict --

13 RENEE SACKS: Yeah, no, no. No.

14 And so I hope I didn't misunderstand, but the
15 fact, when every -- what Sandra was talking about,
16 when they put that million-dollar goal --

17 SENATOR AKSHAR: Yeah.

18 RENEE SACKS: -- nobody could -- no White
19 woman could participate in those projects. So it
20 ruled them out completely for -- for over -- from
21 2004, to --

22 SENATOR AKSHAR: Yeah.

23 RENEE SACKS: -- to 2013.

24 For many, many years, so White women did not
25 participate in that.

1 However, what -- when you put a goal, what
2 does the goal really mean?

3 The majority company, if they're given an
4 opportunity not to meet a higher goal, will meet the
5 lower goal.

6 It's a question of the creativity of the
7 company to find and -- and serve to support smaller
8 companies in that -- in that particular project.

9 And that's really the argument.

10 So the argument is, sharing, and greed, and
11 whether or not you can actually develop a program
12 that can get good companies on your team.

13 Many of the companies will find new
14 subcontractors.

15 But our programs now all use -- by the way,
16 and I think we should check this with some of the
17 construction representatives that are here today --
18 use a trickle-down theory.

19 So if you are a construction manager, you
20 hire subcontractors, and your subcontractors are
21 often responsible for finding the MWBEs.

22 And so that trickle-down creates even yet a
23 different problem, because that's -- as you look at
24 the process of payment, that also trickles down.

25 And so the MWBEs, some of them do want to

1 work for subcontractors, they're subcontractors
2 themselves. Some of them don't.

3 One of the things that's going on in New York
4 State, which I think is important to mention before
5 we conclude, is that, prime contractors, small prime
6 contracts for smaller companies, would really begin
7 to be an essential way to develop capacity.

8 So if you give a small construction
9 contractor a 100,000- or 200,000-dollar contract --

10 And we have that now, we have discretionary
11 awards. Some of them are up to 200,000. The MTA is
12 up to 400,000. I know there's been discussion of
13 increasing it.

14 -- those smaller contracts allow you to build
15 your own capacity, to be responsible to a government
16 agency.

17 So it means doing more work.

18 It means breaking some of the contracts
19 apart, looking at it.

20 And one last thought:

21 SUNY, and I don't know if CUNY does this, but
22 SUNY I know does this, they use an algorithm to
23 determine available capacity.

24 And then the Governor came in with his goals.

25 And SUNY, I believe, is succeeding in meeting

1 its goals, as some of the other agencies are as
2 well, in terms of what's available to them.

3 SENATOR AKSHAR: Of course, when you take
4 direction from the Governor, you probably should.

5 Let me end on this, because we have a lot of
6 speakers, and I'm not trying to be rude.

7 You said that to me.

8 This description of all the good things
9 happening in the state, right, Southern Tier
10 Soaring, and everything else, you talked about the
11 regional economic development councils.

12 And I say this with respect, the six bullet
13 points that you have here do not -- it doesn't
14 reflect reality --

15 RENEE SACKS: No.

16 SENATOR AKSHAR: -- right, in the
17 Southern Tier or in the North County or the
18 Finger Lakes.

19 And you talked about the regional economic
20 development councils being exciting, right, in that
21 those councils were going to drive the economy.

22 Right? You said that?

23 RENEE SACKS: They're not.

24 SENATOR AKSHAR: They're not.

25 And they were exciting, up until the point

1 that the Governor stepped on the throat of all of
2 the local people who were putting forth really
3 exciting projects, people who understood their
4 community. Right?

5 Until he took that ability away, and made all
6 the decisions here in Albany by a bunch of
7 bureaucrats sitting at the 30,000-foot level, it
8 became unexciting.

9 RENE SACKS: And that is not something
10 I knew or understood.

11 So I, respectfully (indiscernible).

12 SENATOR AKSHAR: Right. Okay.

13 Yeah, of course.

14 I really appreciate your testimony, and look
15 forward to carrying on the conversation.

16 Everybody good on the dais?

17 SENATOR SERINO: Can I ask a question?

18 SENATOR AKSHAR: Sure.

19 SENATOR SERINO: Thanks for being here.

20 And it sounds like your experiences are so
21 different from the Upstate New York.

22 And so, in the city, if there are women
23 that -- like you say, they expanded the Women's
24 Business (sic) Council, and there are women from
25 Upstate New York.

1 And if they belong to the Women's
2 Business (sic) Council, if they try to do the MWBE,
3 are they going through the City process, like,
4 rather than --

5 RENEE SACKS: Okay. So the City -- the City
6 has a certification process and the State has a
7 certification process.

8 SENATOR SERINO: Right.

9 RENEE SACKS: There are different --
10 different processes within that.

11 And the State is a little bit more rigorous
12 in terms of site visits.

13 SANDRA WILKIN: (Inaudible.)

14 RENEE SACKS: Okay.

15 So you're aware of that.

16 But is that your question?

17 SENATOR SERINO: Yeah, I was just wondering
18 if there are women-owned businesses, Upstate
19 New York, would they go through -- even if they
20 belonged to your council, would they go through your
21 process because they're under your council --

22 RENEE SACKS: We don't have -- I'm sorry.

23 We don't have a certification process.

24 SENATOR SERINO: Okay -- no, I mean, because
25 they belong to the Women's (sic) --

1 RENE SACKS: Builders Council.

2 SENATOR SERINO: -- Builders Council, going
3 through the process that the City does, because it's
4 not as rigorous as upstate --

5 RENE SACKS: It's simply a downloadable
6 application that they can complete.

7 There is not, normally, a site visit, but
8 there are triggers there too, and controls that the
9 City has put in place, to make sure that they're not
10 getting shell companies or scam companies; that
11 they're getting valid MWBE firms.

12 SANDRA WILKIN: There is -- there is a --
13 currently, a memo of understanding, to a certain
14 extent, to fast-track the firms that are certified
15 with the State of New York in order to become
16 certified with the City.

17 And there is one, obviously, also with the
18 City, where firms that are certified with the
19 City of New York, that can do business with the
20 State.

21 And we're all looking at, obviously, making
22 the certifications throughout New York State, and
23 with the different agencies, much more of the
24 ability of being able to streamline them would be
25 very helpful too.

1 But the -- what -- being in this business for
2 as long as I have, what I see is, with the large
3 lens, is that there is an increase, one, in the
4 certification of both on local levels and in the
5 state, and, also, the ability to do this work,
6 and -- and women wanting to come into the industry,
7 which is very encouraging to want to do it, and to
8 find a mechanism with which to be able to do
9 business with the State of New York that's here --

10 RENEE SACKS: There is a --

11 SANDRA WILKIN: -- and having all of those
12 doors being able to be opened.

13 And it's -- and, quite honestly, as difficult
14 as this is, because New York is very complex, it's a
15 good and thrilling opportunity to see that.

16 And the encouraging feeling with the Senate,
17 that, truly, the State and -- wants to encourage
18 minority- and women-owned businesses to participate
19 in the businesses.

20 SENATOR SERINO: And I absolutely love the
21 concept, but it's just interesting to me, because
22 listening to people that call my offices, and
23 I think it's such a disparity between upstate and
24 downstate, that it's a huge issue.

25 Like, you guys love it. But then we get the

1 people that are calling and complaining constantly
2 how the system doesn't work.

3 So it's, just, I guess we have to find that
4 balance where we can make it work.

5 SANDRA WILKIN: And I do have an opportunity
6 to travel the state, and I do see that.

7 And I think it's up to all of us to realize
8 that we have to encourage the other women businesses
9 around the state to be able to -- one, to become
10 certified, and to have the opportunity of doing
11 business and to be able to grow it.

12 And I know, on behalf of Women Builders and
13 our executive director, Renee, and our board
14 members, we would love the opportunity to make sure
15 that we transfer the state, and be able to see other
16 women to be able to support them, because when we
17 started out, it was very, very lonely.

18 And being a women business, you know, some of
19 the things haven't quite changed yet. And we're
20 hoping that does, and we can continue having more
21 and more memberships throughout New York State,
22 especially upstate.

23 SENATOR AKSHAR: Senator Sanders is going to
24 close.

25 SENATOR SANDERS: I think I can; therefore

1 I can't.

2 I can attest that New York City is different,
3 but it didn't start out that way.

4 It was changed by the people themselves, and
5 two of the people are sitting right before you.
6 They're being very kind, but they were very
7 ferocious and -- as advocates to change things.

8 And it took some of us legislators -- at that
9 time I was one of them -- time. But they were
10 ferocious in changing our minds, and I would argue
11 for the better.

12 My last point that I wanted to point, and
13 this is an important one:

14 I would say, typically, when a disparity
15 study is done, the group that does the disparity
16 study is hired to defend the study.

17 Makes sense.

18 You did it, you both know it better than
19 anybody else.

20 Defend it.

21 The Empire State did it different. We did
22 not hire the group to defend the study, so they
23 don't have a voice.

24 And there's an African saying that says, "The
25 man who is not there is always guilty."

1 So we don't have someone to defend this
2 study, if you wish, so we're going to hear things.

3 And -- well, having said that, thank you for
4 doing what you're doing.

5 And thank you, Mr. Chair.

6 SENATOR AKSHAR: I would invite Mason Tillman
7 anytime they wanted to come --

8 SENATOR SANDERS: Yes.

9 SENATOR AKSHAR: -- and provide testimony, to
10 give us that testimony.

11 Ladies, thank you so much.

12 RENEE SACKS: Thank you.

13 SENATOR AKSHAR: Johnny, you're up next, from
14 The Business Council.

15 So I'm going to be the bearer of bad news
16 now, because we've gone very long with the first
17 couple of people providing testimony.

18 Maybe we could limit it 10, 15 minutes --

19 JOHN EVERS: Sure.

20 SENATOR AKSHAR: -- for the rest of the
21 group, just so we can keep it moving.

22 JOHN EVERS: No problem.

23 SENATOR AKSHAR: Otherwise, (indiscernible)
24 for a week.

25 JOHN EVERS: No, I said that to my good

1 friends Brian Sampson and Mike Elmendorf.

2 I don't want to just say "ditto," but I'm
3 before Sampson and after Elmendorf.

4 But --

5 SENATOR AKSHAR: If you could just talk into
6 the mic for me, just so that the rest of the
7 audience can hear.

8 JOHN EVERS: Certainly.

9 Good morning.

10 I'm John Evers. I'm director of government
11 affairs for The Businesses Council of New York
12 State.

13 We represent about 2400 businesses, employ
14 1.2 million employees.

15 Additionally, within The Business Council, we
16 operate the New York State Construction Industry
17 Council.

18 Senator Akshar has addressed it. Many of you
19 are aware of it.

20 It's comprised of the state's leading
21 construction material, and supply heavy highway and
22 cement companies, engineering, and architectural
23 firms, and construction-related trade associations;
24 about 475 members.

25 I want to thank the Senate and the Chairs,

1 collectively, for having this forum to discuss the
2 MWBE.

3 I think the first thing I have to do is to
4 emphasize that The Business Council has a strong and
5 long history of supporting the MWBE program and
6 Article 15-A, the executive law.

7 I want to thank the Senate also for extending
8 the program until December 31, 2019.

9 As a starting point, it's essential to
10 recognize that the primary purpose of the state's
11 MWBE program is to address any historical
12 discrimination and result in disparities in the
13 awarding of state contracts.

14 It is indeed a laudable one, but this cannot
15 occur in a vacuum.

16 Under the U.S. Supreme Court's 1989 decision,
17 City of Richmond versus J.A. Croson Company, the
18 Court determined that the state and local
19 governments engaging in such programs must base them
20 on facts as ascertained by those studies.

21 When disparities are identified, they are
22 then addressed by programs that both proscribe
23 remedies and take into account current capacity --
24 and I'm going to use "capacity" a lot today --
25 within the MWBE sectors.

1 Goals established in the aftermath of a
2 disparity study must be crafted to address issues
3 found in particular markets, with an ultimate goal
4 of decreasing any disparities with particular
5 industries in regard for public procurement.

6 Now, that's pretty simple.

7 For example: In 2010, and this was mentioned
8 earlier, 22.7 percent of public construction
9 contracts, and 24.53 percent of all
10 construction-related contracts, were targeted in the
11 executive law. And that's a combination of both
12 minority and women contracts.

13 I am certain that many legislator have heard
14 concerns regarding the Executive's mandated
15 30 percent goals in state contracts and the lack of
16 data to support the significantly increased
17 participation target.

18 As a staff member responsible for
19 construction issues at The Business Council, I can
20 attest the industry's concerns regarding this
21 application of the executive law.

22 I would urge your Committees, and this is in
23 some of the testimonies today, to look closely at
24 the Executive Law, Section 313, and Section 5 of the
25 New York Consolidated Rules and Regulations,

1 142.2(D).

2 It just outlines it.

3 That's one of our major complaints about
4 this.

5 That is the law that should be followed.

6 All must be considered by statute in setting
7 participation targets.

8 Since these factors seem to have been
9 ignored, determining a blanket statewide mandatory
10 goal of 30 percent of contracts, it seems New York
11 State is not following the key sections of the
12 executive law, amended after the 2010 disparity
13 study, such as industry; again, capacity;
14 percentages articulated in the law based on the
15 disparity study, and paramount to any goal in the
16 Croson case.

17 That is the basis for these studies.

18 That is the basis for these programs.

19 In the 2016 study made several questionable
20 claims.

21 Notably, that 53.05 percent of prime
22 contractors and 53.48 percent of subcontractors are
23 MWBE firms.

24 But we have found that when these goals were
25 set for 30 percent, and our contractors came to us

1 time and again, increasing -- asking for an increase
2 in waivers, it didn't make any logical sense.

3 I would love to know, that if this was the
4 universe identified in this study, which was almost
5 put into state law, why would there be need any room
6 for waivers?

7 It just doesn't follow mathematically.

8 Now, there are many questions that need to be
9 answered by the Legislature when it comes to
10 renewing 15-A of the executive law.

11 Now, we have been supportive of industry
12 efforts to generate additional information, and
13 I laud the Senate for asking for additional data.

14 For example: When AGC of New York began its
15 attempt to find data upon which various state
16 agencies have been basing their MWBE goals,
17 ultimately leading to a filing of an Article 78
18 lawsuit, The Business Council filed an amicus.

19 The results of that litigation showed little
20 study has gone into agency-specific goal settings.

21 And I won't repeat what Mr. Elmendorf said.

22 We wanted the results as well.

23 Turns out they're not forthcoming.

24 To that end, we applaud the Senate for not
25 accepting the Executive's draft proposal for a 15-A,

1 including the acceptance of the 2016 disparity
2 study.

3 If that had been made law, this would have
4 changed the program almost unidentifiably.

5 It would then spread to locals without local
6 studies, creating a 10 percent bid preference in the
7 law, investing ESD with broad new powers, rather
8 than improving some of the performance right now ESD
9 has for certification/recertification, which seems
10 to keep coming up.

11 Just a couple of points of we would suggest
12 to this Committee and to the Senate, and the
13 Legislature overall, and the Executive:

14 Increase the W -- or, MWBE capacity as
15 needed.

16 I've been doing construction for The Business
17 Council and other entities now for about 20 years.

18 When it comes to the MWBE capacity, that is
19 the goal: To have a healthy, vibrant industry that
20 can make these goals, ultimately, as Mr. Elmendorf
21 says, where this will then merge the capacity out
22 there with the need out there.

23 We have been adamant when it comes to
24 workforce development, and we would urge that some
25 of the workforce-development money that was set

1 aside in this year's budget be targeted towards that
2 kind of capacity.

3 I wouldn't -- I'd be remiss if I didn't add
4 some of the other impediments. And this kind came
5 up earlier, and, hopefully, will come up later today
6 as well.

7 This is a holistic approach when it comes to
8 construction.

9 Some of the impediments for the entrance into
10 the construction world are some of the very laws we
11 have on the books. And I've been in many of your
12 offices discussing these.

13 The scaffold law:

14 We all know that the impact of that has on
15 the coverage, if you can soon get it with the
16 dwindling insurance markets covering this.

17 I guarantee you that's an impediment for
18 entrance into the market.

19 Apprenticeship requirements:

20 We just heard the last speaker talk about
21 apprenticeship requirements.

22 And, also, the mandatory PLA agreements.

23 How are these small companies going to get
24 into the markets with all of these major impediments
25 in their way?

1 And, lastly, as I mentioned earlier, ESD.

2 If ESD is going to run this program, then the
3 certifications need to be done faster, the
4 recertifications need to be done faster. Websites'
5 lists, (indiscernible) that information, all that
6 needs to be updated and approved.

7 If our contractors are coming to the State of
8 New York, asking for help, they should get help
9 right away, and a lot of this falls on ESD.

10 In the budget there was discussion of
11 improving ESD's performance.

12 I would say that there's one key thing right
13 now that can be done when it comes to the MWBE: If
14 they're going to administer the program, then they
15 need the resources to do it.

16 And I've kind of hyphenated this, and I know
17 I've given you the testimony in advance, but I think
18 there's a very big opportunity here.

19 This is a very all-encompassing program. You
20 have a year to do it.

21 We signed on to the industry letter that
22 Mr. Elmendorf talked about, where we needed -- we
23 had 30 industry partners saying, do the study.

24 Appropriate \$2 million, do it again.

25 Take that study, fold it into the program,

1 and renew it.

2 The program's not going away. You've given
3 some breathing room here.

4 But it's your opportunity to make sure that
5 this works; that the law is followed, that the
6 proper studies are made, and that this disparity
7 study is not questioned. That it is taken, like it
8 was in 2010, to fold it into the law to improve the
9 State's procurement process when it comes to MWBEs.

10 Thank you, Senators.

11 I will entertain any questions.

12 SENATOR AKSHAR: Senator Little.

13 SENATOR LITTLE: Thank you.

14 Thank you, John.

15 SENATOR AKSHAR: Senator Little.

16 SENATOR LITTLE: Thank you.

17 And thank you, John.

18 You know, several years ago I was appointed
19 to the task force on the minority- and women-owned
20 business, and there were many agencies on that task
21 force, there were a couple of legislators; just
22 people involved, and certainly people from the
23 Governor's Office as well, and we haven't met in
24 probably two years right now.

25 Do you think that would be helpful to get

1 this task force going again?

2 JOHN EVERS: Certainly.

3 Any input on moving the ball down the field,
4 an old football term, would be helped.

5 And these are helpful.

6 During the budget, we met with
7 Senator Sanders on this.

8 He hosted a meeting just down the hall here,
9 three hours to discuss this.

10 But I do think having the executive involved,
11 rather than just having it once a year when it came
12 to the budget, would be appropriate.

13 SENATOR LITTLE: Right.

14 And I think, also, that with all the agencies
15 involved, as well as the minority- and women-owned
16 business division of ESD, we would get the resources
17 that we needed, because I think everyone's pointing
18 out that there isn't enough staff to help get these
19 certifications fast enough.

20 And the other question I have is, on the
21 recertification, a three-year window doesn't seem
22 long enough because the paperwork is so difficult.

23 They have to be in business for a year as a
24 minority- and women-owned business before they can
25 apply.

1 It takes another year and a half, sometimes
2 two years, to get certified.

3 And then, before you know it, they're getting
4 hit again with a verification, recertification
5 process, and more paperwork.

6 What would you think would be a more
7 appropriate time period?

8 JOHN EVERS: Well, I've heard from our
9 members that the certif -- to get into the program
10 is very difficult. And I've heard as high as 14 to
11 18 months for recertification.

12 I think the input of Empire State Development
13 on how this is currently operating would be a must.

14 They could probably tell you, rather than me
15 telling you anecdotally, saying that they need to
16 have some help in streamlining this, and maybe more
17 staff.

18 I would love to know what they say about it.

19 SENATOR LITTLE: Well, you get a driver's
20 license and it lasts for eight years, but that's
21 probably too long.

22 But I would think something better than three
23 years would be appropriate.

24 JOHN EVERS: These are, by and large,
25 I imagine, with the capital needed to start these

1 companies to keep them going, that I would venture
2 that it would be longer than three years.

3 SENATOR LITTLE: Okay. Thank you.

4 SENATOR AKSHAR: Senator Sanders.

5 SENATOR SANDERS: Well, it's good to see you,
6 sir.

7 JOHN EVERS: Thank you, sir.

8 SENATOR SANDERS: Let me start of with an
9 agreement.

10 I bet you didn't expect that.

11 JOHN EVERS: No, absolutely.

12 SENATOR SANDERS: Let me start with an
13 agreement.

14 I think that -- that one of -- the fastest
15 way to make an improvement on this project, on this
16 program, is to put adequate staffing to ESDC;
17 adequate staffing, triple the staff, whatever is
18 needed.

19 Now, even the Governor saw this when his
20 budget proposal said that they would have five
21 additional employees.

22 I don't -- you know, none of us have studied
23 it to know if that's enough, but, just my gut
24 feeling is, it's way under what is needed.

25 We should -- if I had my way, we'd have five

1 for each region, or something of that nature.

2 We do need to -- it -- it should not take --
3 for -- this is the day and age of computers. We
4 should not have something taking month after month
5 after month, which should take -- whatever's taking
6 14 months should take around 4 months, at best, or
7 something of that nature.

8 We do need to do things there.

9 Now, we and several groups had the
10 pleasure -- well, I had the pleasure of meeting with
11 them, and we wrestled for three hours or more -- it
12 did seem like five -- and -- but when I -- when
13 I left it, I didn't feel the goodwill that I -- I --
14 I was looking for, because, at the end of it, it
15 turned into an all-or-nothing.

16 And I said to these groups: What are the
17 things that we all can go to the Executive and say,
18 We need change? What are the minimum amount of
19 things?

20 And the group consensus was: No, we want
21 everything or nothing.

22 And maybe that's how things are done in
23 different worlds, but in the world of government,
24 usually, that's not the case.

25 I implore you to -- to join what I believe is

1 an effort that's going to say: Here are some of the
2 things that can be changed immediately, here are
3 some of the things that we need to change in the
4 next six months, and et cetera, and not take an
5 all-or-nothing approach.

6 I -- if were you there directly, I'm sure you
7 wouldn't have done that. But, that group, we came
8 out with all or nothing, and it ended those things.

9 All-or-nothing usually ends up, somebody's
10 got to win and somebody's got to lose, and you can't
11 be bipartisan if you want everyone -- all losses
12 will go over here and all wins will go over here,
13 I guess, part of the reason we end up in these flip
14 positions, I would argue.

15 Any disparity study, any study, can be
16 challenged. That's just the nature of a study;
17 anytime you write anything, it can be challenged.

18 Any study can be challenged.

19 I saw a capacity study that's making its
20 rounds.

21 If we ever sit down and look at
22 Thomas Bolton -- Professor Boston's study, we're
23 going to have challenges to that study.

24 Any study can be challenged.

25 The thing is, does a study meet with the

1 truth? as you were speaking earlier, Chair --
2 Chairs.

3 Even -- you presented things. Does it meet
4 with the truth in the area that you are?

5 If it doesn't, then, you know -- then we've
6 got to look at more than simply words on paper.

7 We're going to have to look at what's going
8 on on the ground.

9 I look forward to continuing to work with
10 you, and others, to really wrestle with something,
11 and something that should be -- it shouldn't matter
12 whether you're a Democrat or a Republican, if it's
13 the truth.

14 There are no democratic truths. There are no
15 Republican truths.

16 There's a truth.

17 Who champions it?

18 Well, who gets there first.

19 Looks like you did this time.

20 Let's -- let's catch up.

21 Thank you very much, sir.

22 Thank you.

23 SENATOR AKSHAR: Thank you, Senator Sanders.

24 John, always a pleasure to be in your
25 company.

1 Thank you for the testimony today.

2 JOHN EVERS: Thank you, Senator.

3 SENATOR AKSHAR: Ms. Richardson and
4 Ms. Farber.

5 DENISE RICHARDSON: Good morning.

6 Thank you for inviting me to speak today.

7 In the interest of time, I'm going to really
8 truncate my testimony. I'm going start off by
9 offering some comments on some of the questions that
10 have been asked.

11 To Senator Little, I think a five-year window
12 on recertification is appropriate, and here's why
13 I think five works.

14 Many times, a business who is signed up for a
15 subcontract will find that the time in which they
16 plan to perform the work will move as the projects
17 need move.

18 So you will find a situation where someone is
19 looking to be recertified. They have a portfolio of
20 work on the books that they haven't performed yet,
21 and it falls within that window time of them being
22 certified, making their new certification inaccurate
23 because it doesn't reflect current work that they
24 are scheduled to perform.

25 So a five-year window would open up that

1 opportunity for recertification, and I think would
2 eliminate some of the inaccurate information.

3 The other thing, in terms of ESD, I'm going
4 to differ from my colleagues.

5 I do not think that the issue is that ESD
6 needs more staff.

7 I think the issue is that the process needs
8 to be fundamentally changed, and I'm going to
9 address it specifically from some examples that
10 I have seen from women-owned businesses.

11 It's almost a no-win situation.

12 If you come from the industry, but you
13 haven't specifically performed the work; in other
14 words, you are, you know, a paving contractor, but
15 you yourself have never been behind the paving
16 machine doing the paving work, the decision will be
17 made that your company cannot perform a commercially
18 useful function.

19 There are thousands of corporate executives
20 around the country that run very successful
21 businesses that never actually performed the work.

22 I'm sure that Jeff Bezos has never worked in
23 Amazon, packing boxes.

24 That's just an example.

25 And so my point is, is that, then, on the

1 flip side to that, you have a woman who has come up
2 through the ranks in the business, but because her
3 business includes other family members --

4 And I want to point out that most
5 construction, and construction in particular, most
6 of the businesses are family-owned businesses. For
7 the GCA in particular, 97 percent of our members are
8 family-owned businesses. But people focus on our
9 six members who are large publicly-traded
10 corporations and think that's what the GCA is. And
11 that's not true.

12 -- and so when ESD looks at fam -- a
13 woman-owned business that has family members, the
14 immediate assumption is, well, the family members
15 are controlling the business and not the woman.

16 I'll leave my comments right there.

17 And so I think one of the things that needs
18 to happen in terms of the initial certification
19 process and the recertification process, is that the
20 process needs to be decentralized.

21 And I'm going to recommend, in fact, that the
22 agencies that do the contracting become more
23 involved in the certification process because they
24 know their agency requirements.

25 And some will argue firms get certified

1 across multiple agencies, and that's true.

2 But at the same time, OGS, SUNY, they know
3 what their building contractors need to do to
4 successfully perform the work.

5 DOT knows what its contractors need to have
6 in terms of capitalization and business expertise
7 and equipment in order to successfully perform their
8 portfolio of work.

9 Right now the whole process is centralized in
10 ESD, and there's not adequate communication between
11 ESD and the agencies about what companies do, and
12 what they need to do to successfully perform.

13 Also, to address the regional issue that many
14 of you face, by tapping into the resources in your
15 agency regional offices, they know the vendor
16 community in that region, and they can help with the
17 outreach as to why successful firms in the private
18 market in your region are choosing not to be
19 certified, or finding problems with the
20 certification process.

21 And you should be using your agency regional
22 offices as more of a resource in this area than is
23 currently being used.

24 The other thing that I want to talk about
25 briefly is, one of the big barriers for small

1 businesses of any demographic, and for MWBE firms as
2 well, is the contract process itself.

3 There has not been enough of a focus within
4 state government to look at the contract terms and
5 tailor those contract terms to the size of the
6 project.

7 The terms and conditions for the
8 Second Avenue Subway project needed to be a lot
9 different. There was a lot more risk, a lot more
10 liability, many more issues, than they need to be on
11 replacing a stairway at a subway station; and yet
12 the contract terms are the same.

13 The payment process is incredibly onerous.

14 And when you talk to a lot of MWBE firms that
15 do not bid for prime contracts, one of the reasons
16 that they will say is: They can go to their prime
17 contractor and they can get some help getting paid.
18 But when they're prime contractor with the agency,
19 they have to wait.

20 And, yes, the contracts say that people will
21 be paid within 30 days, but it's 30 days from an
22 approved invoice.

23 And I can tell you hundreds of stories, where
24 there have been many, many delays within the agency
25 in getting to that "point of approval." And it

1 could take weeks and months before the agency
2 decides to move your invoice to the point of it
3 being approved for payment.

4 And that's one of the biggest barriers for
5 MWBE firms.

6 In 2017 the GCA did a report that we
7 submitted to ESD, that made 16 different
8 recommendations for how to improve the MWBE program.

9 And a copy of our report is attached to my
10 formal testimony, and I hope that you will take a
11 look at it.

12 Unfortunately, there has been no dialogue and
13 no follow-up from ESDC about our recommendations.

14 Now maybe all 16 of them were not things that
15 ESD would agree with. But I can guarantee you that
16 in there there are one or two, and possibly more,
17 recommendations that deserve a thoughtful review and
18 deserved consideration.

19 And there has been silence, and that has been
20 extremely unfortunate.

21 And I just want to touch on the issue of a
22 mentor-protege program.

23 There's too much emphasis on making the
24 responsibility of a mentor-protege program on --
25 onto prime contractor.

1 When a prime contractor bids a job, the
2 contractor looks at the schedule, the project
3 requirements, and the technical specifications, and
4 puts the team together that it believes can best
5 help them meet those obligations.

6 It is not unrealistic for a prime contractor
7 to expect that all of its subcontractors will come
8 to the table knowing how to do the work that its
9 subcontractors have bid on.

10 A mentor-protége program that requires the
11 prime contractors to teach their subcontractors how
12 to do work has to exist separate and apart from any
13 contract on which they are bidding. It's just
14 unrealistic.

15 And if you take the issue away from
16 construction and move it into something like IT, for
17 example, there is no way the State would expect that
18 an IT professional that it hires to develop a system
19 application for them would hire firms to work on
20 that application that have never done computer
21 coding before.

22 And yet, for construction, we are asked to
23 take firms that perhaps have never done the work
24 that we're looking to contract for and teach them
25 how to do it at the same time that we're trying to

1 meet a budget and a schedule, and that's just
2 unrealistic.

3 And so, instead, what we are recommending is
4 that the agencies take on this responsibility.

5 And, in fact, the MTA has done that by
6 setting aside certain of its contracts for firms in
7 the mentor-protege program where they manage the
8 program directly. But, there is one significant
9 weakness, and that's within the area of signal
10 rehabilitation.

11 We had recommended to the MTA in 2010 that
12 they set aside time in their signal school
13 specifically to teach emerging and small electrical
14 contractors how to do signal work.

15 It's been a subject of much press. Even
16 upstate, I'm sure you've all read articles about the
17 state of the subway system.

18 And, yet, nothing has been done in that area,
19 and yet it's a critical part of the MTA's
20 procurement portfolio, and yet they have not done
21 anything to build that capacity, and expect,
22 instead, that the limited number of prime
23 contractors that do signal work will form a program
24 to train those other firms. And that's just not
25 realistic, when, in fact, the MTA has the resource

1 available through its own school that it uses to
2 train its own personnel, to train other people in
3 the industry.

4 And I think as we look at building capacity,
5 building contractor capacity, throughout the
6 industry, and throughout the state's portfolio
7 procurement, and not just within construction, but
8 to look at goods and supplies, to look at health
9 care, and look at the other areas of procurement.

10 What needs to happen is, is the agencies that
11 are doing the procurement need to take greater
12 ownership in building their capacity and doing the
13 outreach to the agencies.

14 And, finally, I want to touch on one other
15 issue.

16 The directory, the ESD directory of certified
17 MWBE firms, is the touch point in terms of
18 evaluating if a prime contractor has met its MWBE
19 goals, because that is the only way that a
20 contractor gets credit, is by using a certified
21 firm, and yet the directory is fraught with
22 inaccuracies.

23 We did a study of construction firms in the
24 downtown state region because that's our most
25 often-used pool of firms, and we found that over

1 half of the firms had incorrect information in the
2 directory.

3 So what does that mean for us?

4 As prime contractors, if we're reaching out
5 for firms that haven't done business with us in the
6 past, we're looking for firms that are no longer in
7 business or firms that have incorrect contact
8 information.

9 At the same time, when we're doing a mass
10 solicitation, we're sending solicitations to firms
11 for work that they don't perform because the
12 information in the directory is incorrect.

13 And, again, touching back to the agencies,
14 the agencies that do the procurement, that are
15 looking to meet the MWBE goals, are also in the best
16 position to be working with ESD to straighten out
17 the directory because they know who the vendor
18 community is.

19 And so I hope you'll take a look at my formal
20 testimony, but I'll answer any questions you have.

21 SENATOR AKSHAR: Anyone?

22 Senator Sanders?

23 SENATOR SANDERS: A very quick point.

24 Ms. Farber (sic) --

25 Might be good to use a mic.

1 -- let me push pro one of the ideas that you
2 put out.

3 You said that we should -- an idea is, to go
4 to the -- to certify at the regional area.

5 The -- if we were to do this, then you would
6 certainly need some stronger IG types or MWB
7 compliance officers.

8 You'd have to -- if you were to do that, you
9 would have to really beef up your IGs, because
10 you're -- otherwise, you're assuming that just
11 because somebody is the agency head that they have
12 no biases themselves.

13 So you would have to figure some way of
14 making sure that somebody is making sure that that
15 happens.

16 DENISE RICHARDSON: I think there's lots of
17 existing levels of oversight and investigation in
18 government.

19 And I think the thing we need to focus on is
20 not so much what might go wrong, but the fact that
21 all of you have touched on today how cumbersome the
22 process is, how lengthy the process is, and how, in
23 many ways, it turns into an arbitrary process,
24 because some firms will be certified with the exact
25 same ownership profile as another firm that's denied

1 certification.

2 And so I'm less concerned about that issue
3 than I am about making sure that we have a process
4 for firms if they wish to do business with the
5 State, that it's a business-friendly process.

6 All of you have touched on today, you know,
7 anecdotes that you've told of people in your
8 districts that have looked to get certified and
9 walked away from the paperwork, walked away from the
10 length of time.

11 That should not be the case.

12 Someone's first interaction with government
13 for procurement should not be a negative process.
14 There will be lots of negative things that come
15 later.

16 But -- and I'm serious about that.

17 But fact of the matter is, the certification
18 process should be a process that welcomes firms and
19 gets them ready to do business with the State, not
20 turns them off.

21 And one of the ways I believe that we can do
22 that, is the regional offices tend to have a closer
23 relationship on a day-to-day basis with their
24 surrounding vendor community.

25 SENATOR SANDERS: A 10-second warning story.

1 When we started in New York City, we gave
2 the -- an agency was in charge of making sure
3 everybody complied.

4 When we studied it, the agency that was
5 supposed to make sure everybody complied had the
6 worst compliance record of everybody else.

7 If we just leave to it government, or leave
8 it to anyone, you're going to need to consider
9 putting some type of way of looking in on it, and
10 you may have something there.

11 Thank you very much, Mr. Chair.

12 DENISE RICHARDSON: I just want to touch on
13 that for one second, if I could.

14 The School Construction Authority in New York
15 City has a very successful program.

16 They do their own certification;

17 They pre-qualify all of their firms;

18 They evaluate the firms based on what types
19 of work the firm can actually successfully perform;

20 And they qualify people at different dollar
21 levels of contracts.

22 As a result, the SCA has developed an
23 extraordinarily successful pool of MWBE firms who
24 work at both the subcontractor and the
25 prime-contractor level.

1 And so to your question earlier about
2 examples from other states that work, the SCA
3 probably has the most successful model in the state
4 in terms of bringing along MWBE businesses.

5 But I would also urge you to look at the
6 state of Florida that has an extremely successful
7 MWBE program, that uses a hybrid of centralized
8 State certification, as well as regional
9 certification.

10 And, again, there's a pre-qualification
11 basis.

12 And, most importantly, which is something
13 that we desperately need, and touched on earlier
14 this morning, we must be setting project-specific
15 goals, because some projects will lead themselves to
16 a very high MWBE goal.

17 And other projects, for example, a paving
18 project that's done under lane-closure conditions,
19 and done under restricted work hours, may not lend
20 themselves efficiently to a large MWBE participation
21 goal.

22 And one of the things that is starting to
23 happen on projects is that we are trading efficiency
24 for greater subcontract participation.

25 And as taxpayers, and we're all taxpayers,

1 those are not the way we should be making project
2 decisions.

3 We should be making project decisions based
4 on: What the work of the project is. What are the
5 constraints in the project? And how does that
6 project best lend itself to maximize participation,
7 which is not a 30 percent goal across the board?

8 SENATOR AKSHAR: Senator?

9 SENATOR RITCHIE: I'm all set.

10 SENATOR AKSHAR: Everybody set?

11 OFF-CAMERA SENATOR: I would just like to
12 applaud her.

13 SENATOR AKSHAR: Okay.

14 Ms. Richardson, thank you very much for your
15 testimony.

16 DENISE RICHARDSON: Thank you.

17 SENATOR AKSHAR: Slight change in the
18 program.

19 We're going to invite Seth Bryant to testify
20 before Greg.

21 SETH BRYANT: Good afternoon.

22 Thank you.

23 SENATOR AKSHAR: Good afternoon.

24 SENATOR SANDERS: Good afternoon.

25 SETH BRYANT: So I don't have prepared

1 remarks, but I'll speak to my experience with the
2 program, which is long, and has been intense over
3 the years.

4 My name is Seth Bryant. I'm managing partner
5 of an MBE law firm called Bryant Rabbino, LLP.

6 We're based in Midtown Manhattan. We're an
7 11-lawyer shop focused on transactional matters, so
8 that means that we do a lot of bond finance work,
9 mergers and acquisitions, real estate, tax,
10 employment, et cetera.

11 Our firm was -- I founded the firm in 2009,
12 and it's been, I think, a very successful endeavor,
13 in no small measure, due to the program -- the MWBE
14 program with the State.

15 Prior to forming the firm, I had been a
16 lawyer at large firms.

17 I started my career at a firm called
18 Debevoise & Plimpton, a large, well-established
19 corporate firm, where I practiced for four years.

20 Moved to another large established firm,
21 Morrison & Foerster, where I practiced for
22 four years.

23 And before founding the firm, I was at a
24 large firm, DLA Piper.

25 Our team is comprised of lawyers that have

1 comparable experience. We have, on average,
2 20 years of experience. We have practiced, again,
3 with large and small clients.

4 Bryant Rabbino's client base includes many
5 governmental entities.

6 We do a significant amount of work with the
7 MTA.

8 We got our start in public finance with
9 DASNY.

10 We have done work with the New York State
11 Thruway Authority, the division of budget, the
12 office of the state comptroller, and New York State
13 Housing and -- Housing and Finance Agency (HFA), and
14 other state entities.

15 And, you know, for us, coming into the
16 public-finance space and doing work with
17 governmental entities, it really, again, I can't say
18 it strongly enough, it would not have occurred for
19 us in the way it did without this program.

20 I founded a firm in 2003, which, in some
21 respects, was a predecessor of this firm before
22 moving back to the large-firm world, and explored
23 the possibility of certification in 2003-2004 time
24 frame.

25 It was a very different era in New York State

1 politics and in the program.

2 What I found was a closed door.

3 What I found was, I remember contacting
4 Empire State Development, the division of minority-
5 and women-business development, and really just
6 getting bad information about what the opportunities
7 were.

8 I was told at that time that, for us to be
9 certified, we would have to, you know, wait for a
10 year, and be in business for over a year, which, for
11 a professional-services firm as we are, was not the
12 case.

13 But I think the person who I talked to felt,
14 you know, so little concerned about MWBEs, and the
15 opportunities that the program was to offer, that
16 the person gave me bad information.

17 And I took that bad information and I said,
18 it would be a waste of time to pursue business
19 opportunities with New York State, because I didn't
20 feel that the climate was good.

21 I talked to other business owners who felt
22 that it was a waste of time, at that time in 2003.

23 At that point, I think the governor was
24 George Pataki.

25 And I don't think there was any emphasis or

1 support for the program, and so we didn't pursue
2 certification.

3 We got bad information, and heard that there
4 were no opp -- heard that there were very little
5 opportunities.

6 And so, you know, we have private-sector
7 clients, as we do now, and so we just said, you
8 know: Why bang your head against the wall. Just
9 pursue other opportunities.

10 And if the state that I was born in, I'm from
11 Buffalo, New York, wasn't a fertile ground for
12 opportunity, I could pursue them in other places.

13 I'm talented.

14 My team was smart, and I am smart, and so we
15 could pursue opportunities in other places.

16 But it was sad.

17 It was a sad state of affairs for the State,
18 and for a business like mine, which was a
19 transactional minority-owned firm, one of the very
20 few in New York City, of all places, and, obviously,
21 part of New York State, that we didn't see
22 opportunities to work with the State.

23 Fast-forward to 2009, 2010, it was a very
24 different environment.

25 The governor at that time, David Paterson,

1 saw the need to strengthen the program, and, in
2 fact, had done considerable work, as lieutenant
3 governor, to establish an Executive 10 Task Force
4 that looked at New York State's procurement program
5 and rules and opportunities.

6 And they found -- you know, and you all, I'm
7 sure, have access to the Executive 10 reports.
8 I won't summarize them here too much.

9 But they found a closed shop, I'll say.

10 And so they went to make reforms, and
11 enlisted the Assembly and the Senate as partners in
12 making reforms. And in 2010, four strong
13 improvements to the state's MWBE law were passed.

14 And from there, when Governor Cuomo came into
15 office, he did something that surprised myself and
16 many members of the MWBE community.

17 He announced an aspirational goal of doing
18 20 percent of the state's work with MWBEs.

19 Now, as an MBE, we were thrilled about that,
20 obviously.

21 As a lawyer, I understood what an
22 "aspirational goal" meant.

23 It didn't mean that it was the State's goal.
24 It meant that we will try to get to 20 percent.

25 And, with a little scepticism as a business

1 owner, I thought, you know, that's nice. You know,
2 we'll see if we get there, but, it's an aspirational
3 goal.

4 But what that effort did in setting that
5 aspirational goal, what I saw, I saw the state
6 agencies and authorities actually tried to find
7 MWBEs, and actually do lifting to ensure that
8 opportunities were pursued with MWBEs.

9 And so it was a very, very, you know,
10 I think, important and a strong step in support of
11 the program, and in support of making sure
12 opportunities are available to all business owners
13 in New York State, or all communities of business
14 owners.

15 I mean, if, you know, the great state of
16 New York is about opportunity, then I would expect
17 that that would be an important objective.

18 And so, it was taken, and I think he --
19 Governor Cuomo, I mean, pushed harder, and raised
20 the goal to 30 percent.

21 But, again, it's an aspirational goal.
22 Right?

23 And so what it did was, again, it made state
24 agencies and authorities dig a little deeper, look a
25 little harder.

1 And from what I have seen, it has put the
2 program -- you know, it has made the program a real
3 program.

4 What I have seen is that, it has created
5 opportunities for MWBEs, where, before, there
6 weren't opportunities.

7 So, in terms of the history of the program,
8 and in kind of what -- you know, what works and what
9 doesn't work, as a lawyer, I do a lot of work
10 certifying, or helping companies that want to be
11 certified, to structure themselves so that they're
12 eligible for certification.

13 And that might mean that a company or
14 entrepreneurs may come to us and say, This is our
15 business. You know, these are the areas that we are
16 pursuing. This is our ownership structure. You
17 know, these are our relationships. You know, help
18 us to get situated to become MWBEs.

19 And in some instances we found companies that
20 have been eligible for certification.

21 In some instances we found companies that
22 kind of said, Hey, you know, I hear that, you know,
23 if we're certified, you know, I just want to -- you
24 know, I don't care, whatever, I just want to get
25 this thing certified. Can I call -- you know, I own

1 this business. I'd like my sister, or my wife, or
2 someone else, to take it and run with it.

3 And with those clients, you know, give them
4 some gentle counseling and say: It may not work.
5 It may not reach -- you may not reach your goal of
6 certification because there's a -- there are
7 requirements in terms of independence, and just a
8 track record in the business, et cetera.

9 And, you know, to the -- to the young lady
10 who preceded me, or I didn't catch her name, but she
11 talked about decentralizing the certification
12 process.

13 I would be a little concerned about
14 decentralizing the certification process just
15 because of that, unless there were, I think as
16 Senator Sanders mentioned, strong compliance
17 components to it.

18 So I think, at some level, decertification --
19 decentralizing could be helpful, but, again, with
20 compliance.

21 But what works in terms of the program,
22 I understand that there's a lot of concern about the
23 30 percent goal, and people kind of just don't
24 understand it.

25 I mean, it's really -- you know, and I think,

1 at some level, it's a bit confusing because the
2 Governor talks about a 30 percent goal.

3 And you really have to actually read the regs
4 to understand what they require. And they do
5 require, on a contract-by-contract basis, that goals
6 are established.

7 The way the Governor's Office, or the way the
8 Executive has, and the agencies, I should say, have
9 addressed that, they recognize that. But they have
10 entities that enter into prime contracts,
11 essentially, agree to use good-faith efforts to
12 reach that aspirational goal.

13 And I think that that's, you know, an
14 appropriate and not-too-difficult step to ask one to
15 make some good-faith efforts.

16 I do think that there was a missed
17 opportunity in not passing the executive budget
18 which softened, at some level, the requirements to
19 demonstrate good-faith efforts.

20 I do think that there was a missed
21 opportunity in not passing the executive budget
22 which softened, at many level, the requirements to
23 demonstrate good-faith efforts.

24 What -- and one thing that the executive
25 budget included was, taking away some of the

1 bureaucratic requirements to establish good-faith
2 efforts, which, as an MBE, I fully support.

3 You know, I think that the -- the program,
4 which has been around since 1988, has been a very
5 successful program.

6 I would hope that this body would continue to
7 support it.

8 I think the Governor's proposal -- or, the
9 executive budget proposal of a five-year
10 reauthorization, with significant reforms, was
11 important.

12 But I think that, you know, the fact that the
13 negotiation kind of watered all of that down, and,
14 instead of a five-year reauthorization, brought the
15 reauthorization to a one-year reauthorization, was a
16 disappointment, certainly, to the MWBE community.

17 But I think, for the state of New York, we
18 should be able to do better and give our businesses
19 more continuity, more stability.

20 For a firm like myself, like ours, you know,
21 we have a lease that we have to sign in a few months
22 for a new space.

23 And so to have a one-year reauthorization for
24 the program, where we have a business that, you
25 know, has a significant relationship to State work,

1 is disappointing.

2 I mean, we'll be fine.

3 But, you know, I think that what we need,
4 ultimately, is a good program that is rational, that
5 addresses concerns that people have in terms of
6 matching the goals with the availability of talent.

7 But I think we also need a firm commitment by
8 the State to make opportunities available to all
9 participants in the state.

10 And for a long time, it wasn't the case, as
11 I mentioned, in terms of what we experienced in
12 2003, and, certainly, in earlier periods.

13 I'll say in closing, what needs to be
14 improved?

15 Certification process does need to be
16 improved. It takes way too long.

17 You know, people have -- people, you know,
18 say that the application process is complicated.

19 It is.

20 When you add the personal net worth
21 component, it just makes it complicated.

22 I'll say that, again, given the work that
23 I do, we help clients that are looking to get
24 certified in other jurisdictions and with private
25 certifying bodies.

1 And there's no reason why New York State, you
2 know, has the backlog that it does.

3 I do think that resources are important.

4 But I think that, New York City, which, you
5 know, obviously, has a significant program, they've
6 gotten to a place where they can get businesses
7 certified in six to eight weeks.

8 And I think that, if we look at what New York
9 City can do, there's no reason why that can't be
10 done on the state level.

11 So, in terms of what should happen, and what
12 works and doesn't works:

13 The certification process does need
14 addressing.

15 The -- there does need to be more
16 transparency around how goals are established, but
17 I don't think that's, at all, an insurmountable
18 task.

19 There does also need be more outreach and
20 capacity building.

21 I will say, in truly closing, that there is a
22 bill in the Assembly, A-10713, which contemplates a
23 five-year reauthorization of the program.

24 It contemplates setting up a blue-ribbon
25 commission that would be comprised of state --

1 members of state agencies and authorities, members
2 of the private sector, et cetera. And that
3 commission could come together and propose reforms
4 that would actually make the program what it should
5 be, which is the strongest program in the nation.

6 And that bill also has a component, where it
7 encourages a mentor-protege program, or new
8 investment in mentor-protege programs, of
9 \$25 million, which would help to improve or build
10 capacity.

11 So, I really appreciate the opportunity to
12 give this testimony, and if there are any questions,
13 I'm happy to answer any questions.

14 SENATOR RITCHIE: I just have one question.

15 Because you're an attorney, and you're a
16 qualified business, do you have any recommendations,
17 specific recommendation, on streamlining the
18 certification process?

19 SETH BRYANT: Sure.

20 You know, I think that the biggest challenge
21 in the certification process is the "personal net
22 worth" test.

23 The "personal net worth" test exists to cause
24 the program to be in compliance with constitutional
25 requirements.

1 It is not the only test to create a narrow
2 tailoring of the bill.

3 So I think that, you know, this body and the
4 Assembly could look at a change in terms of the
5 approach of determining whether or not a business is
6 eligible from a personal net worth standpoint.

7 Aside from that, certification programs,
8 pretty much, are similar.

9 And so, again, like, there's no -- even with
10 the personal net worth, I don't see any good reason
11 for the State to have the backlog that it has, other
12 than a lack of manpower, or should I say,
13 people-power. Right?

14 The State really slowed down significantly in
15 the last two or three years. Before that, it wasn't
16 such a slow process, but it was pretty slow.

17 But the good news is, but there -- early on,
18 there were things that the State did that softened
19 the delay.

20 What they would do is, if you were pursuing a
21 contract opportunity, and if you had already
22 submitted your certification application, there
23 would be some communication.

24 A person at DASNY might call the division and
25 ask for a push of the application so that an

1 up-or-down decision could be made sooner rather than
2 later.

3 There used to be -- and I'm not sure how much
4 it's the case today, but there used to be a view
5 that, if you had applied for certification, there
6 would be a good-faith kind of belief that you were
7 going to be certified. And so the agency or
8 authority or prime contractor could look at that
9 business and say, yes, we now have a certified MWBE
10 working on this project. They submitted their
11 application on such and such date.

12 So I think that there are things that can be
13 done now to streamline the process by just taking
14 some administrative actions.

15 And enabling that kind of communication
16 between the agencies and the division, that might
17 help jump-start some of these slow-moving
18 applications.

19 But I think -- I also should say, you know,
20 I don't know -- know the number of analysts that the
21 division has looking at these matters, but I would
22 say that, is at a crisis level, and I would say
23 that, you know, the State should really entertain it
24 as such.

25 And I think, you know, if they have

1 20 analysts, to add another, you know, 20 or
2 30 analysts is probably not a huge expenditure,
3 given the State's largess. And it might be a very,
4 you know, well-made investment in a program that
5 clearly works.

6 SENATOR RITCHIE: Thank you.

7 SENATOR AKSHAR: Senator Boyle.

8 SENATOR BOYLE: Yes, thank you very much.
9 Thank you, Counselor.

10 And I just want to thank you for your
11 insights, and for coming here today.

12 If we're able to modify the program to make
13 it more efficient, you actually may be hurting
14 yourself. You'll have fewer people making the phone
15 call to your office.

16 [Laughter.]

17 SENATOR BOYLE: But I want to ask about
18 the -- as I said earlier, the New York City MWBE
19 office has come out to Long Island, and they always
20 make the case, Hey, come to us, we're a lot quicker,
21 and then you have reciprocity with the State.

22 Can you just, real quickly, explain that?

23 And my question really is: What if -- if
24 they're efficient -- and, obviously, we want to make
25 sure that the companies that are qualified, and

1 there's no fraud or anything like that -- what if
2 the State just took over the idea of the same system
3 that New York City has, wholesale, and say, well,
4 you're doing it, you're doing a lot quicker, for
5 some reason?

6 Is it just a matter of personnel, or is it,
7 use -- just, can we use their system?

8 SETH BRYANT: I mean, I think -- I'm glad you
9 mentioned the reciprocity point, because I think
10 that that -- you know, that was a very good step
11 forward at one point.

12 But, I think where it falls down is, the
13 difference is in the requirements between the State
14 and the City.

15 So, again, personal net worth is the
16 difference.

17 Now, if -- if -- I don't think that -- unless
18 New York -- unless New York State, you know, gets --
19 you know, changes the "personal net worth"
20 requirement, I don't think that, you know, the
21 reciprocity program, you know, will work, at least
22 not between the State and the City.

23 Now, it can work in the opposite direction.

24 If someone gets -- if a business gets
25 certified by the State, and then a reciprocity

1 should work for the City and Port Authority,
2 et cetera.

3 But the rub is, trying to go through the
4 process with the City and then, you know, get
5 recognized by the State.

6 You know, I -- again, I think even with
7 personal net worth, it really is a manpower issue.

8 And I think that -- I'm not sure if the
9 division has, you know, focused specialists that
10 look at that issue, and that can move the process
11 along and they just develop an expertise in kind of
12 reading finan -- you know, reading, okay, what
13 someone's stock ownership is, and other personal
14 assets, and all of it.

15 If they don't do that, I would say that that
16 would be probably a smart thing to do.

17 But I don't see a way where, you know,
18 New York City can just -- its process can overtake
19 the State's process, unless there's a change to the
20 "personal net worth" test.

21 I hope that answers your question.

22 SENATOR BOYLE: Thank you.

23 SENATOR AKSHAR: Senator Sanders.

24 SENATOR SANDERS: Mr. Chair, I -- well,
25 first, there's so many good ideas have come from

1 you.

2 Thank you for coming up, and thank you for
3 the wisdom that you have shared with me over the
4 years.

5 One of the things that -- that came out of
6 this one is that, one of the hearings that you need
7 to -- we need to do, we may want to get all of the
8 state agencies, and the City, for that matter, and
9 say:

10 Is there any reason why we don't have one
11 form?

12 Is there any good reason that -- is there
13 some federal stuff that we're tripping into?

14 Is there any good reason why we don't have
15 one form for the entire state; one headache instead
16 of twelve, or whatever the number is?

17 And I know that the state controller --
18 comptroller is actually exploring this.

19 So it might be good to start by questioning
20 him and saying, How far have you gotten with this
21 stuff?

22 And, if he's almost there, we can push him.

23 But if he's not, then we can find out.

24 Because, I have never understood why there
25 have been several different forms; waivers, left,

1 right, and centers, perhaps.

2 And I -- it doesn't make sense, dollars or
3 cents.

4 So that's my contribution.

5 Thanks to Mr. Bryant's contribution.

6 SENATOR AKSHAR: Anybody else?

7 Mr. Bryant, thank you very much.

8 We appreciate you making the trip.

9 SETH BRYANT: And thank you for the
10 opportunity.

11 SENATOR AKSHAR: Unshackle Upstate.

12 Greg, you want us to come to you?

13 I didn't realize you were -- or at least
14 bring your microphone.

15 SENATOR SANDERS: That's what happens when
16 you shackle upstate.

17 GREG BIRYLA: I appreciate your patience.

18 SENATOR AKSHAR: If you note an increased
19 speed in the way we're taking the testimony, it's
20 only because we have a hard stop of 1:30 this
21 afternoon, so that's why we're moving on.

22 Greg, thank you very much for being with us.

23 GREG BIRYLA: Thank you.

24 SENATOR AKSHAR: The floor is yours.

25 GREG BIRYLA: Thank you, Senator Akshar;

1 thank you, Senator Ritchie; thank you, all of the
2 other Senators on the dais today, for addressing
3 this issue.

4 Obviously, I'm the sixth speaker, or seventh
5 speaker, today, and in the interest of time, and
6 everyone's attention, I don't want to be too
7 redundant.

8 And I want to be clear that Unshackle Upstate
9 is not a construction-association group. We don't
10 have any attorneys that deal with MWBE issues on a
11 day-to-day basis.

12 What we are is an education advocacy
13 coalition representing Upstate New York employers.

14 Our leadership board consists of the
15 Buffalo Niagara Partnership, the Greater Rochester
16 Chamber of Commerce, the Greater Binghamton Chamber
17 of Commerce, the North Country Chamber of Commerce,
18 and The Empire State Chapter of Associated Builders
19 and Contractors who will speak later.

20 You've heard a lot today from people who know
21 this issue inside and out, and I don't pretend to be
22 able to match their eloquence on the subject.

23 But what our organization does is,
24 collectively, represent thousands of employers from
25 across Upstate New York, and for 10 years, we have

1 been the most consistent voice in pursuit of a
2 growing upstate economy and strong upstate
3 communities.

4 I want to begin by making clear that
5 Unshackle Upstate continues to support a rational
6 and productive minority- and women-owned business
7 enterprise program in New York State.

8 Our partner chambers and trade groups proudly
9 represent MWBEs among their membership, and they
10 continue to actively support their growth and
11 success, and work every day with them on MWBE
12 issues.

13 That brings me to my -- the first of two
14 primary points. And, again, you've heard some of
15 these today, but that's probably because they're
16 real issues and everybody seems to be facing them.

17 On a near weekly basis, we hear stories about
18 the challenges that firms have in getting certified
19 as MWBEs.

20 Our chamber and association partners field
21 complaints daily and weekly from their members about
22 the significant bureaucratic and administrative red
23 tape in getting certified as such to formally
24 participate in the state's program.

25 I know all of you, as very constituent-minded

1 elected officials, probably hear the same.

2 There are instances, and I won't name names
3 of individual employers, but these are -- these
4 are -- this is a specific example, where it took
5 18 months of process before an MWBE certification
6 was granted in New York State.

7 The same firm, doing the same type of work in
8 California, it took four to six weeks.

9 I don't have the answers to that, and we've
10 discussed that at length.

11 And I think some of the suggestions and
12 conversation today have maybe gotten us closer.

13 But it's, obviously, a bureaucratic nightmare
14 somewhere in ESD.

15 And I think that needs to be an absolute
16 priority of this body here today, and the larger
17 body of the New York State Senate and the New York
18 State Legislature.

19 And if it means bringing people in from ESD,
20 bringing people in from the Administration, talking
21 with the comptroller's office as was suggested,
22 figuring out if it's funding, figuring out if it's
23 resource allocation, if it's staffing, whatever it
24 is, we're doing something wrong, and that's just
25 become abundantly clear.

1 And I have made these points on behalf of our
2 memberships to the Governor's Office; to ESD; to the
3 department of labor; to the Legislature, both
4 Houses.

5 I've gotten universal acknowledgment.

6 I've never received a clear answer on what
7 the exact holdup is, and what we're really doing to
8 solve it.

9 So, hopefully, this is the beginning of that
10 process. And I've heard today that we're going to
11 do multiple hearings, or, you're going to do
12 multiple hearings, across the state.

13 I think that's wonderful, and I would like to
14 see that be a focus of the effort.

15 This bureaucratic nightmare; that is, getting
16 certified/recertified in the MWBE process, it leads
17 right into next problem I'm going to talk about that
18 you've also heard about today, but, many potentially
19 certifiable MWBE firms simply avoid the process.

20 They're aware of it, they know it's a
21 nightmare.

22 The economic benefit to them isn't readily
23 made clear, or it isn't immediately -- they can't
24 contribute the certification immediately to economic
25 advancement, considering how much work it is to get

1 certified.

2 This has hurt the capacity.

3 And, again, I'm speaking from an upstate
4 perspective.

5 I think a lot of the problems
6 Unshackle Upstate speaks about are statewide issues.
7 They're on the island, they're in the city, they're
8 in the North Country, they're in Western New York.
9 We come at them from an upstate perspective.

10 But you've heard a lot today about regional
11 capacity, and I think that's a big problem across
12 New York State, and particularly upstate.

13 We have serious concerns that the
14 administration's arbitrary 30 percent goals are
15 unrealistic.

16 They can result in projects getting
17 contractors outside of their respective regions,
18 opportunities that would be better suited for local
19 employers; local MWBE employers.

20 And part of that problem is the first part:
21 We can't get people certified, so we can't ever
22 increase our capacity.

23 It's a sort of cycle of just futility.

24 We too believe, like you've heard today, that
25 30 percent arbitrary standards are not in line with

1 the Croson judgment from 1989.

2 I'm not going to go through the tenets of
3 that Croson judgment. I think we've heard a lot
4 about that case today.

5 Our concerns with the universal standard of
6 30 percent, even with the waiver process, is that,
7 as -- as determined in Croson, they are far from
8 narrowly tailored.

9 The insistence on a 30 percent standard
10 regardless of project location ignores demographic
11 reality across New York State and regional capacity
12 to ever meet such a high threshold with local
13 contractors and local employees, improving local
14 economies.

15 According to New York State-administered
16 website and database, ny.newyorkcontracts.com (sic),
17 which I believe is a link that goes from ESD, there
18 are, roughly, forty-seven, forty-eight hundred MBE
19 firms registered, fifty-three hundred WBE firms.

20 A simple database query -- and we've heard
21 some of that today -- but a simple database query on
22 this site, using one of the 10 designated
23 economic-development region locations as a search
24 query, clearly indicates that most upstate regions
25 simply can never meet the regional capacity at

1 present -- or, do not have the regional capacity at
2 present to meet this goal.

3 I think Senator Little mentioned earlier, in
4 the North County, there's 19 certified MBEs, there
5 are 110 qualified WBEs, according to the last time
6 I searched.

7 In Mohawk Valley, Senator Amedore's area,
8 has 12 certified MBEs, 96 certified WBEs. The
9 Southern Tier is 30 and 123, respectively.

10 And in my testimony has a list of all the
11 regions across the state.

12 This data comes from a State-managed website.
13 I cannot guarantee its accuracy or how often it's
14 updated, but I think it gives a pretty good snapshot
15 of what we're dealing with here.

16 This has led to work, in our opinion, being
17 contracted -- or, the 30 percent standard has led to
18 work being contracted out of the region -- out of
19 various regions in order to meet State MWBE targets,
20 denying opportunities to local upstate contractors,
21 local upstate M -- M -- or, local potential MBE
22 contractors upstate, and means the taxpayer
23 investment fails to realize its full local economic
24 potential.

25 This is a major problem for upstate, where

1 I think everybody on the dais would agree, and,
2 every independent economic indicator indicates, is
3 still a very, very much struggling economy.

4 New York State is -- continues to set
5 participation goals.

6 We would like to see some reflection of
7 actual regional capacity in demographics.

8 New York State's past MWBE program and past
9 iterations must be supported -- have been supported
10 by a properly performed disparity study, as we've
11 heard from today.

12 We have a lot of issues with the most recent
13 disparity study.

14 This dispar -- first and foremost, before
15 I get into the contents of the disparity study, it
16 has not been evaluated, adopted, by the Legislature.

17 The Legislature's elected for a reason on a
18 whole host of things. Their input is valuable. You
19 all are among the closest to your constituents, by
20 nature.

21 The executive branch and the executive
22 agencies are very large and they're at the top of
23 the chain.

24 The input that you all bring into the
25 conversations about this, and so many other

1 subjects, of late, that appear to be happening more
2 and more through executive fiat rather than
3 democratic debate and inclusion and compromise, is a
4 major problem.

5 And I think we're seeing that again with this
6 issue.

7 And, we have issues with the outcome of the
8 study.

9 I think that anybody in the construction or
10 contracting industry, many of which have spoken
11 today, have indicated that 53 percent capacity in
12 New York State, for both prime and subcontractors,
13 it just doesn't seem to be a credible number.

14 And maybe I'm wrong, and, hopefully, I am
15 wrong, but we haven't been able to see some of the
16 underlying data supported by that study, as been
17 dis -- as has been discussed today.

18 Unshackle Upstate and its primary partners,
19 we want to see a strong MWBE program in New York
20 State. I mean that from the bottom of my heart.

21 We want to see one that contributes to a
22 growing upstate economy, one that encourages the
23 certification of MWBE firms, one that helps increase
24 our regional capacity so that we can meet realistic
25 goals.

1 But any responsible MWBE program must
2 acknowledge and reflect some of the regional
3 capacity differences that we've discussed.

4 And, lastly, what, at the end of the day, is
5 the point of my MWBE program?

6 It's to improve the economic prospects of a
7 certain class of employer.

8 And that's -- that is a laudable goal, and
9 I think the program has a lot of merit, but, what's
10 the biggest obstacle to opportunity for any employer
11 in the state, MWBEs included, particularly
12 upstate?

13 It -- it's our overall state economy.

14 We have an economy in New York State that, by
15 all metrics, is in the bottom percentile across the
16 country, compared to all 50 states.

17 We've heard:

18 49th in business climate;

19 We have the highest property taxes in the
20 country;

21 We continue to have high corporate and
22 personal income taxes;

23 We have high wireless taxes.

24 All of these things add up, and at the end of
25 the day, add up to being the single-greatest

1 impediment to economic growth and entry into the
2 economy, for any new business, small business,
3 entrepreneur, MWBE included.

4 And I know that's not the focus of our
5 conversation today, but I would be remiss if
6 I didn't bring it up, and didn't -- and didn't at
7 least interject it into the larger conversation
8 we're having today.

9 So, again, I thank you all for this
10 opportunity.

11 I know I covered some ground that -- that's
12 been discussed before. I think it is important.

13 I'm glad I got the opportunity to share these
14 opinions and these insights, and I'll take any
15 questions.

16 SENATOR AKSHAR: Senator Sanders.

17 SENATOR SANDERS: Thank you.

18 GREG BIRYLA: Thank you all.

19 SENATOR AKSHAR: Greg, thank you very much.

20 I hope you feel better.

21 GREG BIRYLA: Thank you.

22 SENATOR SANDERS: Take your time.

23 SENATOR AKSHAR: Mr. Reed, Mr. Porter.

24 GREG BIRYLA: It's the only option I have.

25 PHIL REED: I want to thank you for your

1 time.

2 My name is Phil Reed, executive director for
3 the Northern New York Builders Exchange.

4 I'm joined with Bob Porter, and DC Builders,
5 who's also on our board of directors.

6 And I want to thank you for your time.

7 And we're going to try not to be redundant
8 and cover ground.

9 I will say I want to thank you for your time.

10 Our senator, Senator Ritchie, has been in
11 discussions with us, and has taken an active role in
12 this discussion for the last year.

13 I want to thank you for that.

14 I'd like to preface this by someone that Bob
15 and I both have had to swing hammers to put food on
16 the table. So, me, not so much the last 10 years,
17 but, Bob.

18 But it was encouraging to me that nobody --
19 none of our members -- we represent over
20 200 construction-related firms throughout the
21 North County, and we're part of the BIE -- but, I've
22 never heard anybody say "stop the program."

23 They've always wanted inclusion, and so
24 that's encouraging to me.

25 I know somewhat of the struggle.

1 I'm a -- I'm a parent of -- one of my
2 children has disabilities. A lot of times you have
3 to push some elbows out to get noticed. And
4 I understand how that works.

5 But what we have to understand, too, is what
6 our struggles are in the North County.

7 And, we're just going to give you a couple of
8 anecdotal stories, and then yield our time to other
9 people.

10 I would like to first talk about a project
11 that we've had going on, and Senator Ritchie
12 probably is fully aware of this, is the transitional
13 living project in Ogdensburg, New York.

14 So we have a company called Aubertine and
15 Currier, who's the engineering and architectural
16 firm.

17 This is -- they're on their fourth time
18 bidding the project.

19 Their current GC has dropped out of the
20 project. He cites that:

21 "The project in Ogdensburg, we've been
22 fighting to get off the ground for three years, is
23 unlikely to take place now. So much time has passed
24 since it was bid that we've lost the few MWBE
25 contractors that we had.

1 "We've washed our hands of this project out
2 of frustration, and have no intentions of bidding
3 any other projects with requirements until such time
4 as the goals are brought into line with the supply
5 of contractors in the area."

6 MBE -- MWBE's contractors.

7 So, he has nothing negative to say about the
8 program, but, he spent considerable time and effort,
9 and it's, just, there's some incidental costs with
10 that.

11 So meeting with Aubertine and Carrier,
12 they -- they are finding every way possible to try
13 and get this project off the ground.

14 And I'll remind you that transitional living
15 services is an important piece of our social network
16 in northern New York which helps people with -- that
17 have fallen on hard times.

18 She just wanted me to cite that, in the MBE
19 directory, there's 1,406 MBEs, 49 in the 315 Area
20 Code, which is quite substantial.

21 This last go-round, they've e-mailed 63 MBE
22 contractors, with no response.

23 Now they have spent \$300 on adverti -- this
24 last go-around, approximately \$500 in advertising.
25 They haven't even got the contracts in motion yet.

1 So, that's some of the frustration.

2 She showed me some of the worksheets, where
3 people have spent considerable time trying to make
4 every good-faith effort to get to the fulfillment.

5 And, when this last contractor said, the
6 framer he had lined up, which was not from the area,
7 backed out of the project and won't answer the phone
8 calls.

9 So this is a typical thing in northern
10 New York.

11 I know there's a lot of cows between us and
12 New York City, but it's kind of an isolated area.

13 And so we -- we really embrace the concept,
14 but maybe the cart was put before the horse.

15 We don't have the pool, or people don't want
16 to actually come up and work in northern New York.

17 So, I do have one other -- one other piece of
18 correspondence from one of our members, from
19 Northern Tier Contracting, which is in your
20 district, Senator, St. Lawrence County.

21 He's a general contractor from Gouverneur,
22 St. Lawrence County.

23 "We employ 44 full-time employees and
24 generate \$60 million in construction-contract
25 revenue each year. 90 percent of our work is for

1 northern" -- or, "is for NYS entities in the
2 St. Lawrence and Jefferson areas.

3 "As a prime contractor, I'm obligated to
4 break down the scopes of our awarded projects to
5 find opportunities for MWBE entities to participate
6 in each project. In many cases, this involves
7 awarding subcontracts to MWBE companies for work
8 that my employees could have performed.

9 "As a result, I'm forced to layoff 7 percent
10 of my existing local employees, or not hire new
11 local employees.

12 "This has a significant impact on employment
13 in the North County that, historically, suffers from
14 high unemployment."

15 And he goes on to say he fully supports the
16 program, but it's not practical or sustainable for
17 many of our companies.

18 And I will defer to Mr. Porter about a
19 similar project he may be working on.

20 ROBERT PORTER: Yes, so, I'm bidding a
21 project right now for one of the parks, and it just
22 happens the scope of the project is concrete work,
23 which we do ourselves. And then there's a little
24 bit of fence work.

25 So, I found a fence guy that will bid it with

1 me.

2 I can't meet the MBE goals, but I can get
3 more than 30 percent WBE by a hair.

4 But what it does is, I don't -- I haven't
5 called the four guys that are local that do fencing,
6 to bid on it, because I can't hire them. So,
7 there's no point in me wasting their time, bidding
8 on that job.

9 The number I got from the WBE downstate,
10 who's a good reputable company, I have no problem
11 using them, seems reasonable, but I don't even know,
12 because I'm not getting another number.

13 I've got to -- I'm going to carry that
14 number, and sink a ship; sink or swim with them.

15 I was a Clarkson graduate, it's a school up
16 north, engineering degree.

17 Back to the construction market.

18 You know, I had 40 to 50 kids in all of my
19 classes. There were two girls in there.

20 I know there's 35, 40 percent in St. Lawrence
21 County are woman businesses for the -- or, are women
22 for the disparity study, but, many of them don't go
23 into the construction business. They don't want any
24 part of it.

25 Similar to the trades nowadays, I don't know

1 how -- you know, I can't talk my daughter into
2 becoming a block layer.

3 Right now, the masons union is -- all the men
4 are draining out of it because they're all retiring
5 out, and it's a dying trade.

6 It's like we're trying to tailor this program
7 around one industry. Maybe, broad brush, the state
8 could do 30 percent easily.

9 But, to pin it on one industry, like, say,
10 the construction market, it's just -- it's,
11 really -- it's unfair, I guess, in our opinion, for
12 our area.

13 Even less so, you know, the disparity study,
14 you know, I've taken this right out of their
15 disparity study, and it's -- there's less than
16 5 percent minorities in the North County region.

17 I've got a friend of mine whose wife owns a
18 business that was handed down to her from her
19 father. She's full-blooded Indian. She's been
20 18 months trying to get certified.

21 And, all you got to do is walk up and talk to
22 her, and you -- you know, the business handed from
23 father to daughter, and, there's no -- there's no
24 argument. I mean, they live on the reservation.

25 But, same thing; they don't want to come and

1 work in Alex Bay.

2 They're from the Massena Reservation area,
3 and they've got a small window where they want to
4 work and where they're comfortable with their
5 employees.

6 And, you know, to try to bring in, you know,
7 a fence guy is easy, because you can, you know, load
8 up a vehicle, and he can drive 200 miles and put
9 fence in for, you know, a pretty similar price to
10 somebody that's, you know, around the block.

11 He's burning an extra tank of gas, and maybe
12 paying for some hotel rooms, but, it's not going to
13 drive the price way up.

14 But, we're -- we're constantly at the point,
15 if we are bidding public work, and the goal is
16 30 percent, and I can meet 8 percent of it
17 legitimately, we're having to mark our price up to
18 cover the difference, knowing that we're going to
19 have to shop it out, and try to buy it out after the
20 fact.

21 And, it's just -- it's not really right
22 that -- you know, that I'm not be able to -- you
23 know, I'm not able to go to the low bidder, or even
24 go to a sub that I don't have any background on.

25 You know, it makes it hard for me when, you

1 know, our bond is up, our money is up. Personally,
2 we're guaranteeing that this guy is going to
3 perform, and I don't know this guy from Adam.

4 So it makes it very hard on public work.

5 The other point I guess I want to make on
6 public work, I don't know how we fix it or make it
7 better, honestly, short of getting more minorities
8 and girls to go into the engineering, and, 20 years
9 from now, then they could own a business.

10 You know, they're -- I look at public work
11 like the NFL.

12 You're not going to go to a Pop Warner game
13 and pick up a hot quarterback who's 9 years old, and
14 say, You're throwing for the Cowboys on Sunday.

15 Getting into public work is the most
16 difficult of all construction work.

17 You're really not even helping a lot of these
18 start-up guys by handing them public work because it
19 is so hard.

20 You know, maybe there's an easier way to do
21 it through, start them in the residential end, or
22 maybe the maintenance end, where they can work the
23 way up through.

24 But, you know, to hand a -- hand a start-up
25 mason, let's say, you know, a big commercial block

1 job, with dormitory authority inspectors looking
2 over their shoulders, and, you know, independent
3 testing agencies, and all this other special
4 inspections, it's -- you're setting them up to fail,
5 you know, in a lot of cases.

6 PHIL REED: But that last project that you
7 did talk to, that you're getting a bid on for the
8 fence contractor, what was his response?

9 Was -- we -- he doesn't even know if he
10 could -- he's a -- what's his backlog?

11 ROBERT PORTER: Well, so, yeah, that's --
12 I guess that's the other thing.

13 He's -- he can't do the work this year.

14 If the work's got to be done this year, then
15 don't even give me a -- or, you know, if we can push
16 the work off till next summer, then he's got backlog
17 available to do it.

18 So, it may fall that he can do the work next
19 summer, just because it takes the parks so long to
20 award their jobs, that it will push into winter, and
21 the job will shut down anyway.

22 But, you know, that's something else we're
23 juggling.

24 You know, I didn't even submit the bid on
25 this yet. It's due next Tuesday.

1 So...

2 GREG BIRYLA: So -- and I think, too, that,
3 again, we're such an isolated region, it's difficult
4 to draw people to come up.

5 And I was a project manager for a
6 construction company at one point, and -- that was
7 traveled the country.

8 And -- but to pay per diem and travel, it
9 just pushes the price, which taxpayers are going to
10 end up paying for.

11 But it also -- you know, we are somewhat
12 isolated up in northern New York, but we have
13 companies that have been in business for
14 generations. And they don't get a -- they don't
15 even get a chance to look at this work.

16 They come in, they've contributed to their
17 communities. They're upstanding citizens. They are
18 great corporate citizens. But they don't even get a
19 shot at it because, they don't qualify.

20 For them to be -- it's hard enough to do
21 business in New York.

22 I mean, workman's (sic) compensation rates,
23 try and be a roofer, and look at your insurance
24 rates.

25 So, it's even tougher, I think, when you get

1 up further and further away from everything, and, to
2 not be able to just get a piece of the work, when
3 you've been paying taxes and been a hard-working
4 company, it -- they somewhat feel slighted about
5 that.

6 And I might be putting that nice, Senator,
7 because you hear a lot of it also.

8 So -- but we really appreciate your time.

9 And we won't go over some of the remedies
10 that some people have already offered.

11 We just wanted to give you a little taste of
12 what happens by the Canadian border in northern
13 New York.

14 So, we really appreciate your time.

15 If you have any questions, we'll be happy to
16 answer them, do our best to answer them.

17 SENATOR RITCHIE: Well, I want to thank you
18 for coming down and sharing your perspective,
19 because I just want to make sure that people hear,
20 you know, we live in a pretty rural area and pretty
21 far away. And, though everyone is supportive of the
22 program, the realities of making it work in the
23 North County are -- are difficult.

24 You're mentioning once again the list.

25 And, another issue popped up that, not only

1 is the list not big enough, and it's not updated,
2 and some of those contractors don't participate, the
3 few remaining contractors that are on the list have
4 so many requests for so many other projects out
5 there, they can't keep up.

6 So, you know, there are a number of issues
7 that you brought up that I've heard.

8 You know, meeting with you and your
9 association in the past, that, you know, it's very
10 frustrating that, given the economics of our area,
11 that anytime any -- any business, or any project,
12 has to be brought in, a company from outside the
13 area, when there are so many people looking for
14 work, is certainly a concern.

15 So, thank you for coming, and --

16 PHIL REED: Thank you.

17 And I really think it's a fantastic idea that
18 you're going to do this in other parts.

19 And I would really appreciate it if you came
20 up our way, and, we would take you around, and show
21 you some of the beautiful areas of The Thousand
22 Islands area, and look -- and you can see firsthand,
23 if you drive, how many open fields are up there.

24 And it's -- there is difficulty.

25 I might just say one thing, maybe this starts

1 at school, you know, in the vocational programs, and
2 get young people.

3 I know that, I have three sons, and the push
4 was to push them all to college.

5 Maybe that doesn't work for everybody.

6 But the vocational programs are a great
7 steppingstone to getting people involved.

8 And like Bob said, you know, you got to pick
9 up a hammer, you got to pound some nails.

10 ROBERT PORTER: Yeah, we have BOCES in our
11 area, which is great for that.

12 PHIL REED: And we should encourage --

13 ROBERT PORTER: That's a big plus.

14 PHIL REED: -- young men and women of
15 minorities to -- to -- that it's a -- we should
16 welcome them, and show them that there's a rewarding
17 career.

18 You know, a carpenter, look, what's -- what's
19 a mason going to be making, when everybody -- when
20 they're in high demand?

21 You know, people made fun of car mechanics.
22 Now they're working on BMWs, making more than a lot
23 of us.

24 So I think it starts with us too, to
25 encourage young people that this is a trade for

1 everybody. This is a welcoming thing.

2 And I think -- I was encouraged to hear
3 everybody today saying, I know we have difference --
4 difficulties, but everybody wants the same goal:
5 Everybody wants inclusion, and push this thing
6 forward.

7 It's best for all New Yorkers if we all work
8 together with that.

9 So, thank you again.

10 And, I hope this goes up towards our way, and
11 I personally invite you out.

12 SENATOR AKSHAR: Well, Phil, we're definitely
13 coming your way. Senator Ritchie insisted upon it.

14 And I promised Senator Sanders I would show
15 him a clean river.

16 PHIL REED: Yes.

17 SENATOR AKSHAR: So we'll show him -- we'll
18 show him the St. Lawrence.

19 PHIL REED: Yes, we will.

20 [Laughter.]

21 PHIL REED: We'll give you a first-hand tour
22 of The Thousand Islands.

23 SENATOR AKSHAR: Senator Little.

24 PHIL REED: Thank you.

25 SENATOR LITTLE: Yeah, thank you so much.

1 I have the eastern part of the North County
2 from Senator Ritchie.

3 But, you really put reality on what we're
4 trying to say, and tell people.

5 I'm convinced that what the North County
6 needs the most is more year-round residents, and
7 you're not going to have them unless they have jobs.

8 And unless we make some changes to this
9 program, we are actually taking jobs and giving them
10 to other areas rather than the people and the
11 businesses that exist in our area.

12 So, you mentioned the waiver program, and --
13 but more than that, the requirement, that before you
14 can get a waiver, you have to prove that you have
15 tried your best to find businesses.

16 And I heard -- we heard from one person that
17 some of the New York City and downstate businesses
18 are saying, Stop calling us. We are not coming up
19 north to do this work. We have all the work we can
20 handle down here.

21 And for your job to say, Oh, we can put up
22 the fence next year, it's unacceptable.

23 We have people in the North County that can
24 do fencing.

25 That's why we need an easier waiver program.

1 We need regional goals, adjustable.

2 And, hopefully, with better certification,
3 simpler certification, we will grow the minority-
4 and women-owned businesses that we have, and this
5 will be a problem of the past, and we'll be able to
6 correct it.

7 But thank you for being here.

8 PHIL REED: Thank you.

9 ROBERT PORTER: Thank you.

10 SENATOR AKSHAR: Thank you, gentlemen.

11 Okay. We're going to do something a little
12 bit different here, just in the -- for the sake of
13 time.

14 Can I have Brian, Amy, and Louis, and Donald
15 come down to testify next. And then we'll have
16 Campbell, Tom, and -- John, and Dominic wrap the day
17 up.

18 Thank you.

19 SENATOR SANDERS: Mr. Chair, Mr. Porter
20 before spoke of, they don't go to Pop Warner for the
21 Cowboys.

22 Sometimes the Cowboys play like they did go
23 to Pop Warner.

24 I was just noticing that.

25 SENATOR AKSHAR: Amy, why don't we have you

1 start.

2 AMY CRISS: All right.

3 First of all, thank you, all, for being here
4 and listening to us.

5 My name is Amy Criss. I am the director of
6 women-business enterprise and supply diversity at
7 84 Lumber Company.

8 I've been with the company for 17 years, and
9 my responsibilities currently surround supplier
10 diversity, and WBE business development.

11 So that's business 84 Lumber wouldn't have if
12 we weren't a certified woman-owned business, which
13 is also business we don't have in New York because
14 we're no longer a certified woman-owned business.

15 I am here to testify about the importance of
16 Article 15-A.

17 We believe in it wholeheartedly, but we
18 believe in the creation of a certification pathway
19 to allow MWBEs to reach their full capacity.

20 We support the extension of 15-A for
21 five years.

22 We propose a solution for this.

23 We recommend a tiered process for this
24 program, where the first opportunity would go to
25 small diverse businesses.

1 The second opportunity would go to large
2 diverse businesses that are no longer in the
3 program, but that are giving back; that have a
4 supplier diversity program, mentor-protege, joint
5 ventures, training programs.

6 There's no business that's going to help a
7 small diverse business grow more than a large
8 diverse business that has been there and faced the
9 challenges.

10 We think this is a great steppingstone.

11 You hear of diverse businesses that, once
12 they graduate out of the program, what got them
13 there is no longer there, and their business
14 shrinks.

15 So we think this is a great opportunity for
16 everybody to win.

17 84 Lumber is a building-material supplier.

18 We have -- we're owned by Maggie Hardy
19 Magerko.

20 We have 23 stores in New York State, majority
21 upstate. We have two located in Long Island.

22 During the housing-market crash of 2009, we
23 had to navigate extreme hardship, and through that,
24 we became WBE-certified.

25 In 2010, we applied for certification through

1 ESD in New York, and we received our certification
2 in 2011.

3 In 2010, legislation was introduced, and
4 passed, and signed by the Governor, to add a
5 personal net worth and small-business cap.

6 So we went to recertify, and we were declined
7 because of personal net worth.

8 We received a denial letter. Then we asked
9 for a provisional waiver due to the way our business
10 works.

11 We own all our own property, we own all our
12 own equipment, the inventory. You're way over the
13 personal net worth just in one store, let alone
14 23 upstate.

15 When -- it -- we were finally denied the
16 provisional waiver in 2016. Unfortunately, we had
17 to close one of our stores, which is in Watertown,
18 unfortunately, in your area, which cost employment
19 and multiple things in business.

20 We -- we have trucking companies that do all
21 of our deliveries, so that trucking company no
22 longer was there; they no longer needed employment
23 there.

24 So it had a big trickle-down effect.

25 The pizza shops didn't need to deliver as

1 much pizza to 84 Lumber.

2 So, nobody wants to see loss of business, but
3 especially in Upstate New York.

4 We are consistently, still yet -- that was
5 2015-2016 -- I get calls every week from our
6 customers and our contractors, saying: Are you
7 certified? Why aren't you certified? And you're
8 causing us extreme hardship because you're aren't.

9 There was a university upstate that needed to
10 build, like, a shed/a building, and we had
11 provided -- we had provided a bid to them.

12 And they called me and said, I can't find you
13 on the list. Why can't I find you on the list?

14 And I said, Well, we're no longer certified.

15 And they said: Your bid is considerably less
16 than everybody else's. Plus, now, I have to go
17 almost 100 miles to use the next-lowest bid, and
18 it's going to cost me almost double what it would
19 have cost me to build this building if we could have
20 used you, but we can't.

21 So we lost that business.

22 The business was lost from that area in
23 Upstate New York.

24 It cost the State and the university a lot
25 more money to build the building. And it seemed

1 like the lose-lose for everyone.

2 So, we had a bill last year -- thank you,
3 Senator Ritchie -- to remove the personal net worth.
4 And that had bipartisan support, passed through both
5 Houses, but, unfortunately, it was vetoed by the
6 Governor.

7 So we listened, and we are coming back this
8 year with supporting language to -- related to the
9 personal net worth.

10 Right now, it's A-10744, introduced by
11 Assembly Government Operations, Chair People Stokes.
12 And the purpose of this legislation is to provide a
13 pathway for minority- and women-owned businesses
14 that have graduated out of the program, or are too
15 large to participate in the program, but are still
16 minority- and women-owned businesses.

17 With this program, they are allowed to be
18 counted after you have exhausted all your small
19 diverse businesses, which is limited numbers in
20 upstate. And, you're allowed to look at these
21 groups of businesses, that are large diverse
22 businesses, before granting a provisional waiver,
23 but these businesses have to be giving back.

24 So they have to have a supplier diversity
25 program or a training program, mentor program; a lot

1 of things that we've heard here.

2 I think it's a win-win for everybody, because
3 we're helping the small businesses grow. We're
4 giving them help through -- to learn their capacity.

5 We're helping large diverse businesses that
6 have graduated out of the program continue to grow
7 in this program as long as they're willing to give
8 back.

9 And I think we're helping the areas that are
10 having problems.

11 I mean, we have 23 stores, 21 of them are
12 upstate, and we're losing business all the time in
13 those stores.

14 We've lost millions and millions of dollars
15 worth of business a year because we've lost our
16 certification, which means, employment; we don't
17 need as many people, we may not need as many stores.

18 So we're asking -- we're asking for your
19 support on this.

20 There's a few examples, but one of them is a
21 pre-apprenticeship program that we're using right
22 now in our company, which we help underemployed
23 people that may have made some bad decisions or
24 can't find employment.

25 And we are -- we brought a lady, her name was

1 Jasmine Carter. I think a couple of you met her.

2 Very impressive.

3 She had made some bad decisions. Didn't know
4 what she was going to do with her life. Nobody
5 wanted to hire her.

6 We bring her into this pre-apprenticeship.
7 You need no knowledge in construction whatsoever.

8 But there's a labor shortage, so we're
9 willing to train people.

10 And we put them through hard- and soft-skills
11 training. We get them OSHA 10 training, their
12 OSHA 10 certificate. We put them with our
13 contractors on the job sites and we help them learn
14 construction.

15 We also let them learn about the different
16 jobs in our stores. Maybe it's inventory and
17 material moving, or management.

18 And, after six months of being in this
19 program, they can determine what they want to do.

20 Maggie will pay for a full-fledged
21 apprenticeship program for them if they decide they
22 want to be in construction, and we'll guarantee them
23 full-time employment in the industry.

24 They all have -- through the six-month
25 program, they have full-time employment, they have

1 benefits, they have 401(k); they have everything
2 everybody else does.

3 And then if they go in this apprenticeship
4 program, she pays for it, and they will eventually
5 become a carpenter, you know, and they'll be able to
6 be out there. And they may be working for our
7 contractors. They may be a carpenter and start
8 their own business.

9 We believe it's a feeding program.

10 We're able to do this because we're a large
11 MWBE, we're a large WBE. And these are some of the
12 things that we can bring back to this program if
13 this bill is moved through.

14 We believe there's -- we believe there's no
15 other type of business that can support these
16 businesses than a large helping a small.

17 We hope that the Senate Republican Conference
18 supports A-1074 (sic) by supporting the bill and
19 passing it before end of session and making this law
20 in New York, so we can all get back to great, good
21 business and keep growing New York.

22 Happy to answer any questions.

23 SENATOR AKSHAR: All right. Let's take the
24 testimony from the other gentlemen, and then we'll
25 ask questions.

1 Mr. Coletti.

2 LOUIS COLETTI: Okay.

3 SENATOR AKSHAR: Thank you.

4 LOUIS COLETTI: I first want to thank the
5 panel for giving us the opportunity.

6 I really think you're on to something big.

7 I've been an advocate for MWBE programs for
8 over 21 years, and it's like I've talked to myself
9 all the time.

10 But I think that you've got people talking to
11 each other, which is something that we did not have
12 throughout my career.

13 What I would like to do today, in the essence
14 of time, is tell you a little bit about my
15 organization, a little bit about me, because most of
16 you are from upstate, and then I'm going to go
17 through some very specific recommendations, and
18 I would ask you to consider in terms of moving any
19 changes forward.

20 The Building Trades Employers Association of
21 New York City represents 27 contractor associations
22 and over 1100 companies. Almost 10 percent of our
23 members are MWBE contractors. We all have
24 collective bargaining agreements.

25 Myself, I've been in the industry for 31 --

1 in terms of construction volume, my contractors are
2 doing 35 to 42 billion dollars worth of work in
3 New York City, both public and private projects.

4 As to myself, I have been here for 21 years.
5 I worked in the private sector at a large
6 construction management company, where part of my
7 responsibility was to -- MWBE involvement.

8 I helped, and some of the work that I did, we
9 ran successful MWBE programs for the Atlanta
10 Olympics out in Los Angeles City Hall, the Grand
11 Central Station, and four or five state contracts.

12 So I believe Senator Sanders will attest to
13 the fact that I have a very strong working
14 relationship with the MWBE community.

15 New York, obviously, is very different than
16 the rest of the state.

17 We did something that I think -- we've
18 submitted to you, I'm not going to go into it in
19 depth -- we did the first study of its kind in
20 New York City. It was called a "capacity study,"
21 not a disparity study.

22 This study measured actual contract awards,
23 by dollar volume, by minority status, and gender, so
24 we can see where -- where we fell based on actual
25 contractor volume.

1 To no one's surprise, Dr. Thomas Boston
2 came up with a conclusion, that he didn't see how
3 New York City was going to hit the 30 percent goal.

4 So, if we can't hit it in New York City,
5 I empathize with the problems that you have in your
6 own districts.

7 We didn't quarrel with the 30 percent goal.

8 We then put up -- I have a minority and women
9 leadership council.

10 We came up with this -- a book, which I think
11 we've submitted to you, which includes a number of
12 recommendations on how to improve and strengthen the
13 program.

14 You know, there's been a lot of conversation
15 today, and -- about goals, and studies.

16 And I think that what you have to keep in the
17 back of your mind, you hit -- you hit the nail on
18 the head right at the beginning of the hearing:
19 It's all about capacity.

20 That's what it's about.

21 How do we build capacity so that, some day,
22 we may be able to achieve a 30 percent goal?

23 And I think that's the challenge for us to
24 do, and try to meet.

25 And the program needs -- in my opinion, it's

1 had limited success, wouldn't deny it, but it's like
2 building -- trying to build a 30-story building when
3 you put a foundation up for 15 stories.

4 There has to be a stronger foundation as we
5 move forward, and I'll start right from the
6 beginning.

7 Senator Little, you asked a question about
8 the certification process.

9 Whether it's the cities or the states, just
10 throw it out and start over again. Don't try to fix
11 it, because you'll spend all of your time fixing it.

12 Okay. There -- if -- if, at worst, there
13 should only be two certification -- uniform
14 certification applications:

15 One for New York City if they don't want to
16 cooperate;

17 And one for the state, that covers all your
18 local jurisdictions, the port authority, the state
19 agencies at work in New York State.

20 One.

21 You've heard the testimony, it is a
22 horrendous process.

23 What no one has said here, that I think is
24 really devastating for this program, is while
25 they're waiting the 8 months for the

1 recertification, you can't bid any other work, so
2 they lose the opportunity.

3 At least, okay, make your decision, but let
4 me at least compete for the work.

5 No.

6 So the certifi -- and in this report, if
7 you'll look at this section, there is a very
8 extensive discussion about the City certification
9 process, which I'm sure is very similar to the
10 State's, because one of the problems is, a lot of
11 the data that's collected, the State's in a very
12 difficult position.

13 I understand an MWBE doesn't want to give
14 certain proprietary data to a public entity, because
15 that goes on the website, it becomes public
16 information.

17 But if you want one of my prime contractors
18 to hire someone they don't know, that information
19 there doesn't always lead us to believe, I'm going
20 to call up this MWBE contractor I don't know because
21 I have a goal here.

22 So we don't use it.

23 We don't use it.

24 It's not a good, good source of information.

25 So what has happened is, all the major

1 contractors end up doing all of this process, all
2 for each of their own individual firms.

3 And you know who that costs?

4 The taxpayer, because that cost is then
5 included in the cost of the bid for that job. It
6 has to be.

7 I have to take exception to my good friend
8 Renee Saxson (sic), very close relationship.

9 But to hear her sit here and say that my
10 prime contractors are -- are -- they can find MWBs
11 if they can't, is nothing but utter nonsense.

12 Okay?

13 I can tell you, on some major billion-dollar
14 projects in New York City, my contractors have told
15 me they are spending \$3 million to try to identify
16 MWB contractors.

17 And here's how the process goes:

18 You have a big event, 400 people show up.
19 Half of them are suppliers.

20 In New York City, we -- it doesn't have a
21 supplier, but this is a state project so you can
22 count them.

23 The next meeting they set up, they identify
24 all the contractors and they have a pre-bid
25 conference. Well, that number now goes, from 300,

1 to 100.

2 Then after the pre-bid conference, they then
3 call a second meeting to come in and look at the
4 drawings. Now you're down to 50.

5 Now it's time to submit the bid. If you get
6 20 bids, you're lucky.

7 And that could be for a whole host of
8 reasons. The MWBE is busy. They decide that's not
9 the kind of job they want to do.

10 We have a different problem in New York City.

11 For the MWBEs who are successful, we're
12 actually finding that their prices are 10 percent
13 higher than the other bids we solicit, because they
14 know the pool is small, so they figure they can
15 charge what they want.

16 And in cases when it's a low-bid situation,
17 it's another reason why you don't get to the goal,
18 because my contractor, who's bid a job with a
19 hard-dollar number, says, I can't take your number
20 with 10 percent. I have to take the low number.

21 So it's -- it's -- the time now is for
22 reform.

23 I'm getting too old. I want to see this
24 happen before I retire.

25 So I want to go over some things are very,

1 very specific in terms of what you can do as a
2 legislative body, okay, and I agree with other
3 speakers.

4 According to the law, every agency on every
5 project is supposed to share the methodology for how
6 they came up with the goal.

7 You heard the attorney, the previous speaker,
8 is the only person that I heard use the term
9 "aspirational goal."

10 He's the only one that's correct.

11 You read Croson versus Richmond, Virginia,
12 goals are aspirational.

13 Not mandated.

14 Aspirational.

15 The way the State is running the program,
16 they're not aspirational. They're mandatory.

17 And if we don't find a way to solve this,
18 we're going to end up down a path, where
19 I believe -- the answer to Senator Sanders'
20 question -- I believe Philadelphia and New Jersey
21 had lawsuits, and that were completely thrown out
22 because of many of the same administrative
23 requirements that the State has.

24 Nobody wants to do that. Nobody.

25 So they have to do that.

1 And they should also fix the goal based on
2 what the actual hard cost of construction is.

3 In too many instances, we've said, well, this
4 is 100-million-dollar project, so the goal is
5 30 percent of \$100 million.

6 Well, that's the acquisition; the land,
7 that's the design cost.

8 What's the actual hard construction cost?

9 Sixty?

10 Then it should be the percentage of the hard
11 construction costs, not the total project.

12 And establish uniform procedures for clearly
13 documenting what "best efforts" are.

14 And if the best-effort documentation is met,
15 then there should be an automatic waiver. Period.

16 And then, please, please, eliminate all the
17 language that exists, and that existed in the budget
18 language: The liquidated damages, and poor
19 performance evaluations when you can't achieve the
20 goals.

21 They are blatantly illegal.

22 Blatantly.

23 Again, rescind all the provisions which call
24 for criminal penalties.

25 There was just the case in the port authority

1 of New York and New Jersey, where the steel
2 contractor who provided all the steel for Towers 1
3 and 2, and had an MWB partner, were convicted by a
4 jury of MWBE fraud.

5 The MWBE pled guilty, acknowledged that he
6 really didn't do any work.

7 The jury found both parties -- well, the one
8 party guilty, and the judge threw it, the criminal
9 conviction, out of court, saying that MWBE goals are
10 not criminal violations, and, in the contract of the
11 port authority, he followed every step along the
12 way.

13 He documented his best efforts, the authority
14 was provided the service it contracted for, and
15 threw the case out.

16 Criminal case.

17 So let's not go down that road.

18 I talked about certify -- certifications, so
19 I'll go on to the last one in interest of time --
20 the last couple of them.

21 This one I know will be difficult.

22 You have to reform the 240 scaffold law.

23 Insurance costs in this state, okay,
24 represent 9 to 10 percent of the hard cost of
25 construction.

1 When my contractors bid in New Jersey,
2 Connecticut, and anywhere else, it's 2 to 3 percent.

3 MWBE contractors either cannot even get
4 general liability insurance or can't afford it.

5 In the absence of that happening, then
6 I would urge the State to establish a New York State
7 general liability insurance company firm for small
8 businesses.

9 You can't do it based on race, but you can do
10 it for small businesses.

11 For as many of the large contractors that
12 I represent, 65 percent of my members are small
13 businesses.

14 Construction is a small-business industry, so
15 they're all suffering with that.

16 Number two: The State has a bonding program
17 and the State has a loan program.

18 They need to get more banks involved.

19 They need to bring the surety companies to
20 the table.

21 You know, helping an MWBE apply for a surety
22 bond is a very positive thing to do.

23 But then, for whatever reason, they don't get
24 the surety bond, you haven't accomplished anything.

25 So you need that kind of conversation, and

1 getting more banks to participate in that.

2 Here's something that the Legislature did two
3 years ago, that I would encourage you to do again:

4 Two years ago you passed a law, and the
5 Governor signed it, establishing a small-business
6 program for the MTA to award contracts of \$400,000
7 and below directly to small businesses, and waive
8 the bonding.

9 You should -- my suggestion to you is, you
10 should do it for both all city and state agencies.

11 Give them an opportunity to be a prime
12 contractor.

13 Waive the bonding. Let them build up their
14 experience so they can be -- grow and grow and grow.

15 Denise Richardson touched on this, and
16 I don't know how the Legislature does this: Cash
17 flow is the life and death of any contractor, more
18 so if you're an MWB contractor.

19 I have been in this business for 31 years.
20 I have never seen the public change-order process,
21 payment process, as lousy as it is today in any city
22 agency or any state agency.

23 Well, you're supposed to pay -- you passed
24 the law, you're supposed to pay in 30 days.

25 Well, now you get into the argument:

1 Well, when does the clock start?

2 Oh, I didn't get a chance to look at it yet,
3 so the invoice is on my desk, so the 30 days doesn't
4 start till I look at it.

5 If you're an MWBE contractor, you're bankrupt
6 by the time you get it.

7 And I wish that the agencies would stop
8 asking the general contractors to get in the banking
9 business.

10 We're not bankers.

11 We're contractors. We shouldn't be floating
12 loans.

13 There was a discussion today about the
14 regional programs.

15 And I would highly suggest to you that you
16 create regional capacity-building programs, and put
17 more than \$25 million on the table to finance it.

18 So far, over the years, these programs
19 started out as a governmental public policy.

20 And as the requirements grew, rather than
21 putting more money on the table to be a partner, all
22 you did was shift all the burden to the private
23 sector.

24 We have to be a partner.

25 And for those prime contractors that

1 participate in that, they should get 10-points
2 credit toward the MWBE goal, and I'll tell you why.

3 When you go -- you heard a lot of
4 conversation today about mentor programs?

5 If you don't do it through a third party,
6 I'll tell you the experience we had in New York
7 City.

8 And you heard a story here, about a woman
9 contractor who needed a piece of equipment. The
10 equipment was on the site, wasn't being used.

11 And the prime said, I can't loan it to you,
12 but I can loan it to that White contractor.

13 In New York City we have had every major
14 construction manager be called in between either the
15 Manhattan District Attorney or the federal Brooklyn
16 prosecutor.

17 I had Loretta Lynch in my office, telling me,
18 they're charging them with MWBE fraud because we
19 tried to provide assistance to a company on a job,
20 which has been the tradition of this industry for
21 100 years. Contractors have always helped their
22 subcontractors grow.

23 They did it, they got hauled in. Well, you
24 either pay this \$5 million fine or we're going to
25 file criminal charges.

1 So, they paid the fine.

2 Do you think the federal government put any
3 of the money back in the MWB programs?

4 No. They got awards for bringing in the most
5 money.

6 That is not going to change. Okay?

7 The models that have to be changed are the
8 third party, the kind of programs that
9 Michael Garner has set up, both at the school
10 construction authority, and now at the MTA, where
11 there are pre-qualified experts, whether they be
12 financial, whether it be construction managers,
13 attorneys.

14 And if an MWBE company is struggling on the
15 job, the prime goes to the agency and says, Look,
16 that company needs some help in doing its paperwork.

17 And you get an independent third party to
18 help them out, because you cannot get -- if the
19 company is working -- if the subcontractor is --
20 MWB's working directly for the GC, they cannot, and
21 will not, they're not going to take the risk of
22 helping them.

23 And if we don't find a way to provide that
24 technical assistance, they're not going to grow.

25 And I think you'll be happy to hear, that's

1 it.

2 Now, I'm going close it by one of my famous
3 sayings that you'll see in almost anything I talk
4 about with MWBE.

5 That, in closing, I am reminded of a saying
6 by Confucius from 500 BC.

7 "When goals can't be reached, don't adjust
8 the goals, adjust the action steps."

9 And I think -- just by having this hearing,
10 I think we're right at the precipice of adjusting
11 the action steps.

12 And so I thank you for the opportunity.

13 I hope I didn't suck up all your time, Brian.

14 But please consider us a resource, because
15 the problems you're having in your rural districts
16 are really not that different than in New York City.

17 It's -- it's -- it's a -- it's a matter of
18 scale, but they're the same types of problems.

19 So, thank you.

20 SENATOR AKSHAR: Thank you, Mr. Coletti.

21 Mr. Sampson.

22 BRIAN SAMPSON: So I was going to start off
23 by saying good morning, but it's now afternoon.

24 [Laughter.]

25 BRIAN SAMPSON: So, I appreciate that.

1 And I'm not going to spend a whole lot of
2 time. We have testimony that you can read
3 afterwards.

4 We support the MWBE program as an
5 association. We represent over 450, what we
6 consider, merit-shop contractors across the state of
7 New York.

8 Those are contractors who believe that their
9 bid should be awarded based on the merit of the bid,
10 not through any undue influence.

11 In a nutshell, that's what we look for. It's
12 a free-enterprise system.

13 And our contractors, over the years, have
14 done a great deal of mentoring with MWBE firms, to
15 help them grow, to help them get into doing a lot of
16 this work.

17 And I think, overall, you know, we support
18 what's going on here. And I think there's some
19 things that can be done to make this process a
20 little bit better.

21 I think you've heard some of the
22 recommendations today.

23 We do recommend that a new disparity study be
24 conducted in the state of New York.

25 The one that was released, I think, to

1 Mike Elmendorf's point, dropped on, you know, the
2 Friday before the 4th of July, was probably an
3 inopportune time, and, more likely, the result of
4 what was in study.

5 So we think a new one needs to be done.

6 We do agree that, in the pre-bid documents,
7 the goals for that project should be shared with the
8 contractor so they can consider that time, and know
9 what the standards are that they have to meet.

10 I think that that is an absolute wonderful
11 thing.

12 Regional disparity has to be done.

13 I think to Lou's point, if 30 percent can't
14 be reached in New York City, there's absolutely no
15 way they're going to do it in the Southern Tier and
16 there's no way they're going to do it in the
17 North County.

18 So you have to have some capacity for
19 regional disparity.

20 And then the other thing we would ask that
21 maybe be considered is: What is the diversity of
22 the bidding contractor and their suppliers? So what
23 does their workforce look like?

24 If part of the goal of an MWBE program is to
25 get minorities employment, then that should be

1 considered.

2 So what is their employment, and can that be
3 considered towards reaching whatever the ultimate
4 goal would be?

5 So we think those are some very positive
6 steps that we can take in this process.

7 But we also believe that this issue can't be
8 looked at simply in a vacuum.

9 Construction is not a single-issue industry,
10 so we have to look at some of the other challenges
11 that New York faces and puts in front of our
12 contractors.

13 We survey our members every year.

14 MWB comes up as the number-one issue;

15 Second issue that comes up are project labor
16 agreements;

17 Third thing that comes one is the scaffold
18 law;

19 And the fourth thing that comes up is
20 workers' compensation reform.

21 And we'd like to thank you for the work that
22 did you last year on workers' comp. We've seen some
23 very positive numbers coming out. We're looking to
24 see what that will do for those rates.

25 But when you look at those issues, we have to

1 look at them in the context of this MWBE.

2 When you consider issues like annualization,
3 "annualization" is an interpretation of a regulation
4 that's at the department of labor when an employee
5 works public work and private work.

6 DOL has the authority to come in and audit
7 those records. And many times what they'll do is,
8 they will say to that contractor, This employee
9 worked most of their time on public work, and not
10 enough of their time on private work; therefore, you
11 should apply public wages and benefits to the
12 private work.

13 I can share with you two examples of
14 companies that have been put out of business in the
15 state of New York because of annualization, one in
16 Western New York and one in Long Island.

17 So if we're going to -- and these are both
18 MWBE firms.

19 So if we're gonna push for an MWBE expansion,
20 we have to fix the annualization issue.

21 We have to fix project labor agreements.

22 This governor is a big fan of project labor
23 agreements.

24 We have a philosophical problem with them.

25 But I think, if you look at that 2016

1 disparity study, there are comment after comment
2 after comment of minority firms, female-owned firms,
3 who said that they will not bid public work when
4 there is a project labor agreement on it.

5 We have an example in my hometown of a
6 Jamaican-owned company. He has an entire workforce
7 of Jamaicans that he has brought to this country
8 that are working.

9 He cannot, and will not, bid a
10 project-labor-agreement job because he cannot put
11 his employees to work on that job.

12 So if we're going to look at public work,
13 let's look at it in a fair, rational way. Perhaps
14 you allow a project to be bid with and without a
15 PLA.

16 That's an opportunity to level that playing
17 field to make it a little bit more competitive.

18 And I would ask you, as a legislative body,
19 currently, the office of general services has an RFP
20 out, to do five years of PLA studies, to identify
21 contractors to do that.

22 We have a significant issue with that RFP, in
23 that one of the qualifying -- the main qualifying
24 point for those potential bidders is that they have
25 to have had a PLA study accepted and implemented.

1 So you're taking a pool of potential bidders
2 and you're narrowing it down to people that have
3 supported, through a PLA study, the implementation
4 of PLAs.

5 That is a dramatic and drastic overreach by
6 OGS, and it has to be addressed.

7 And I'll close with: Please look at these
8 issues in totality.

9 Not any one issue will make or break what's
10 going to happen in this industry, and we may have
11 philosophical differences on what is right and what
12 is wrong.

13 But at the end of the day, we have an
14 obligation to put projects up, that are done with
15 the best value, with the best quality, and done at
16 the best rate for the taxpayers.

17 And if we want MWBE firms to get more active
18 in public work, we have to remove those barriers,
19 and those legislative and regulatory issues, that
20 stifle them from getting involved.

21 And with that, I'll close.

22 SENATOR AKSHAR: Thank you, Mr. Sampson.

23 Any questions from the dais?

24 OFF-CAMERA SENATOR: No, thank you.

25 SENATOR AKSHAR: Senator Sanders?

1 SENATOR SANDERS: Thank you; thank everybody,
2 for coming out.

3 You've given much food for thought, and
4 there's so much I could say, but I'm going to -- I'm
5 going to save my few words for Mr. Coletti.

6 OFF-CAMERA SPEAKER: Of course.

7 SENATOR SANDERS: This is one of the smartest
8 guys.

9 OFF-CAMERA SPEAKER: I was going to say that.

10 SENATOR SANDERS: He's already given book
11 after book of -- of -- of ways to go about this
12 stuff, have ways to make it better.

13 I may disagree with book after book
14 (indiscernible), I may disagree with some points,
15 but, consistently, he has put some of the best ideas
16 out on this.

17 I am looking to challenge the --
18 Professor Boston's study, sir.

19 I have been calling GIT (Georgia Institute of
20 Technology) where he works, to speak to him. I have
21 some questions over his stuff.

22 But that's almost besides the point.

23 The point is: Can we do better?

24 Can we -- do we take a philosophical
25 position, that -- that we are supposed to do better

1 for the entire people of New York, and the nation,
2 for that matter?

3 Yes.

4 This is -- I agree, this is the step forward.
5 It should be seen as such.

6 Who started it?

7 The Republicans started it, but that's
8 besides the point.

9 The point is: Are they right?

10 If they're right, we should go be bold enough
11 to go and do some stuff on (indiscernible).

12 And so far, you're in the -- going in the
13 right direction, and I commend you.

14 And, you're going to see me in some of the
15 most picturesque --

16 [Laughter.]

17 SENATOR SANDERS: I had to work on that one.
18 That wasn't my first word.

19 -- some of the most pics -- picturesque --
20 I couldn't even do it twice -- places in New York
21 State.

22 So I will count the thousand lakes in the
23 finger. (Indiscernible.)

24 [Laughter.]

25 SENATOR AKSHAR: Thank you, Senator Sanders.

1 And we just -- I want you to put on the
2 record how much money 84 Lumber has lost since being
3 kicked out of the program.

4 AMY CRISS: We estimate about \$20 million a
5 year that we have lost personally.

6 SENATOR AKSHAR: Since what year?

7 AMY CRISS: Since 2015.

8 SENATOR AKSHAR: Great. Okay.

9 Senator Little.

10 SENATOR LITTLE: Just think of the lost jobs
11 in Watertown by having to close that store, and
12 that's what we're talking about. You know, we're
13 trying to create jobs, not lose them.

14 But I commend you on coming forward with a
15 way to look at the ones who are over them, the
16 personal net worth, although, other states don't
17 have it, and I understand New York City doesn't have
18 a personal net worth cap.

19 So, we ought to be looking at that, because
20 there's got to be a better way to do that part of
21 it.

22 Thank you.

23 LOUIS COLETTI: Can I say something on the
24 personal net worth, because, Senator, you make a
25 very important point.

1 In New York City, they chose a dollar-volume
2 work.

3 I don't know whether it's right or wrong.

4 The issue, as I understand it, in the State's
5 discussion, because we believe you should lift the
6 personal net worth cap also, is there's a
7 constitutional requirement, you can't keep it
8 open-ended.

9 So what is that -- and I certainly don't know
10 what the answer is, but we support lifting the
11 personal net worth.

12 SENATOR LITTLE: But I really want to look at
13 Amy's idea. I think that that -- there would be a
14 lot of benefits to that program.

15 LOUIS COLETTI: Yes.

16 SENATOR LITTLE: Thank you.

17 SENATOR AKSHAR: Thank you for your
18 testimony.

19 LOUIS COLETTI: Thank you for your patience
20 and interest.

21 SENATOR AKSHAR: Okay. Last --

22 SENATOR SANDERS: Thank you to the Chair.

23 Oh, I'm sorry.

24 SENATOR AKSHAR: One more group.

25 SENATOR SANDERS: Absolutely.

1 SENATOR LITTLE: It's a great way to do it.

2 SENATOR AKSHAR: Yep.

3 So, Campbell Wallace, Tom Carey, and
4 John Murphy, they'll be the last three to testify.

5 And I think we bought ourselves an extra
6 10 or 15 minutes.

7 Tom Carey, John Murphy, did we lose you?

8 I don't blame you.

9 Okay. Dominic, why don't you start.

10 Thank you.

11 DOMINIC CASSANELLI: Sure.

12 First and foremost, I want to thank everybody
13 on the panel for giving us an opportunity -- me an
14 opportunity to speak, and, labor, a seat at the
15 table. We really appreciate that.

16 I had a bunch of examples that I was ready to
17 give you guys, and, for lack of time, I'll be quick,
18 and I have one example that kind of encompasses all
19 of my examples.

20 And, I just want to start by saying, this is
21 a very progressive idea, one that I, technically,
22 agree with. But, with every idea there's certain
23 issues that you don't foresee in the course of that
24 idea.

25 And, as a labor organization, as a union

1 representative, and the employees we represent, and
2 the contractors that we deal with on a day-to-day
3 basis, we hear certain scenarios that possibly you
4 guys don't hear, and -- and I want to be a voice for
5 you guys to help you to hear those.

6 And one of the main ones that has been
7 touched on here is the amount of time it takes to
8 actually get the certification.

9 We have truck-rental company. It took almost
10 two years to receive their certification.

11 Now, in the course of those two years, the
12 amount of opportunities that they lost due to not
13 having that certification was tremendous.

14 And, it doesn't just affect that trucking
15 company.

16 If you're familiar with construction now, a
17 lot of these contractors, they decide to -- just
18 with the liabilities and the insurance factor, they
19 decide not to buy trucks, and -- as opposed to rent
20 them. It's just cheaper a way of doing business,
21 and a smarter way, to be honest.

22 But -- so the issue therein lies, is that
23 these truck-rental companies, like this company that
24 I'm talking about, that went for the certification
25 and couldn't get it for two years, when you go --

1 and all these contractors now, when you go and you
2 start a job, and you lay a shovel in the ground,
3 more than likely, the dirt happens to be
4 contaminated.

5 And, if you ask me, and if you look, in
6 Westchester, which is where -- we represent
7 Westchester in Putnam County.

8 Westchester, Putnam, and in the five
9 boroughs, you know how many companies there are that
10 haul contaminated that are an MWBE?

11 "One," to handle Westchester, Putnam and all
12 five boroughs.

13 All of the rest of the companies come from
14 New Jersey.

15 Now, I don't think that this program was
16 started to help New Jersey companies get work in
17 New York State. I mean, it doesn't seem prudent to
18 New York State. I mean, you're eliminating jobs
19 from New York, and allowing New Jersey companies to
20 come in and do the work.

21 Another point to this, the best-effort test
22 that you have to meet, is we're noticing a lot that
23 the -- again, we represent 300-some contractors in
24 Westchester and Putnam alone -- and one of the tests
25 that don't meet the criteria is that they have a

1 labor contract.

2 So, we dealt with a company who had no other
3 choice but to go outside of the union realm and hire
4 any non-union concrete company.

5 There happens to not be any union MWBE
6 concrete companies in Westchester and Putnam County,
7 so, they went outside the scope of our labor
8 contract. We had issues with that.

9 And their answer to us was that, Well, that
10 doesn't meet the test. You know, just because we
11 have a labor contract, that doesn't show that we
12 gave our best effort.

13 So they can, therefore, violate our labor
14 contract to go outside and hire a non-union company.

15 Like I said, non-union, union, okay, but what
16 about the local labor?

17 And the problem with this is that, that
18 concrete company happened to be from out of the
19 area, not in Westchester, not in Putnam.

20 So now you're not having people shop in our
21 stores, you're not having people pay the taxes that
22 we have to pay in Westchester, and you know it's one
23 of the highest.

24 So these are just some of the examples that
25 I wanted to give, that, I don't know the answers.

1 I don't have the answers, but I'm willing to discuss
2 all these issues.

3 And like I said, I have many more -- many
4 more examples of companies that bid work, that, when
5 they won the job, they couldn't even use their
6 20 trucks that they had sitting, because they had to
7 meet a certain goal. So they had to sit all their
8 trucks and rent.

9 It's a problem.

10 And, I think the more and more you talk to
11 the MWB enterprises and the non-MWB enterprises,
12 I think you'll get more of a gauge of where people
13 lie, and maybe better avenues to try to rectify the
14 issues that are at hand.

15 And I thank you for giving me the time to
16 speak.

17 SENATOR AKSHAR: Dominic, thank you.

18 DOMINIC CASSANELLI: Thank you.

19 SENATOR AKSHAR: Mr. Wallace.

20 CAMPBELL WALLACE: Thank you.

21 Thanks for having me on today.

22 Senator Akshar, Senator Ritchie, appreciate
23 the opportunity to share the engineering industry's
24 perspective with this panel.

25 I'm not going belabor the many points that

1 were made earlier. We agree with a lot of the
2 solutions that were proposed.

3 One thing we do want to make clear, though,
4 is that the engineering industry, like the legal
5 industry that was represented earlier, is a
6 professional-service industry, and the barriers to
7 entry to it are intentional.

8 Engineering and architecture in the
9 allied-design industries, they're tough to get into
10 by design, so that things aren't designed
11 incorrectly, the public is protected, and there's
12 not as much movement in and out of the industry.

13 One thing the engineering industry operates
14 in is a world of facts and figures, and objective of
15 measurable reality.

16 So, when we looked at the most recent
17 disparity study, we definitely scratched our head
18 for a moment and wondered where some of the numbers
19 came from, especially, as I said earlier, we're a
20 licensed profession. And to be an engineer, you
21 have to be certified by the state education
22 department.

23 So, you can go on the website and see exactly
24 who's a licensed engineer in the state. It's a
25 pretty well-defined and well-described world. You

1 can tell who exactly is in -- is in this industry.

2 And with minimal further research, you can
3 look at the demographics of this industry also.

4 And, the numbers we came up with in our
5 association, I should say, we are ACEC New York, and
6 we represent 270 member firms in the consulting
7 engineering industry, and our membership reflects
8 the membership of the state's engineering industry
9 as a whole very closely.

10 And, I believe that we have
11 20-something percent minority or minority -- women-
12 or minority-owned firms. That's the rough estimate
13 of the makeup of our profession.

14 And in the construction-related industry, a
15 section of the most recent disparity study, the
16 numbers didn't match, didn't even come close to
17 that. We're not quite sure what they were looking
18 at.

19 So, obviously, for the program to succeed,
20 and we want the MWBE program to succeed, full stop.
21 We think it's -- the -- the social goals behind it
22 are laudable, and it really provides a lot of
23 opportunity for the state, in general.

24 For the program to succeed, though, it has to
25 be done in such way that comports to reality, and

1 is -- and will stand up strong to any, you know,
2 potential challenges.

3 So, clearly, having the disparity study
4 redone in such a way that truly measures what is
5 measurable to. This isn't something that is not
6 knowable. We really think that's a key step, going
7 forward.

8 Some other things that would really help the
9 program a lot:

10 Obviously, speeding up the certification
11 process.

12 We have firms that have called us and spoke
13 to us, who are members, and said:

14 You know, we'd love to participate. We just
15 can't get through the effort. We're so busy with
16 doing what we're doing. You know, the state, in
17 some areas, is booming, there's a lot of
18 construction going on. We can't take time out of
19 what we do to go through the process to get
20 certified.

21 And it would make lives easier for some of
22 our larger firms, to work with the firms that want
23 to be certified. But if they can't even get in the
24 program in the first place, that's certainly not
25 helping anyone.

1 Capacity is something that has to be measured
2 also.

3 Looking at Firm A and Firm B, one might --
4 one might be one category, and the other might be in
5 a separate category. But to say that the two can do
6 equivalent work isn't realistic.

7 In looking at the disparities in the state,
8 capacity is a huge thing. They're not equivalent
9 across the board.

10 So that's something that we think has to be
11 addressed in the next disparity study.

12 Finally, you know, we have a number of best
13 practices. I'm not going to belabor this because
14 this has already been said.

15 The flexibility, it has to be regionally
16 focused, and it there has to be flexibility in how
17 the numbers are driven.

18 And compliance should be an evaluative,
19 communicative tool. Firms that do make a good
20 effort to try to comply, it shouldn't be held over
21 their head and they shouldn't hammered with it.

22 Waivers are something, again, have been said.

23 As the disparity -- or, pardon me.

24 As the goal numbers have gone up, waivers
25 have gone up. We think that's a really good proxy

1 for the fact that there's a misalignment between
2 what the numbers are and what the reflective -- what
3 the demographics are in the state.

4 So, again, in the interest of time, I won't
5 go through my entire testimony, but we stand ready
6 to answer any questions you may have about it.

7 SENATOR RITCHIE: Senator, (indiscernible).

8 SENATOR MURPHY: Yes.

9 First of all, Dominic, thank you for being
10 here today.

11 Your example is spot-on, that Senator Little
12 is talking about, about how we're -- we need to keep
13 jobs here in New York State.

14 The intent of this program, I think we all
15 agree with, the implementation is a disaster --

16 DOMINIC CASSANELLI: I agree.

17 SENATOR MURPHY: -- of how to try and make
18 sure that we can supplement it, and make sure that
19 it's doing the right thing.

20 Your examples were an excellent overview of
21 why we need to fix this, to make sure we keep the
22 jobs here in New York State because we can't make a
23 quota. And so now we got to do this, and ex -- and
24 import people from New Jersey. And we can't even
25 have our own people in New York State work.

1 And it's a big reason why we're ranked 50th,
2 dead last, in America as a business-friendly state.

3 So we'll fix it.

4 Thank you for being here.

5 DOMINIC CASSANELLI: Thank you.

6 SENATOR RITCHIE: Senator Little.

7 SENATOR LITTLE: Just on the engineering
8 side, and the architecture, I know, kind of looked
9 at, in the years past, as a non-traditional job for
10 women.

11 And you do have programs, though, right now,
12 aren't we, where we're encouraging women to become
13 more interested in math, science, engineering, and
14 even in architecture?

15 CAMPBELL WALLACE: Our association sponsors
16 scholarships, and a number of them support that
17 exact interest, as you're saying.

18 And we agree 100 percent, they have been
19 fields in the past that have not been as inclusive
20 as they could have been. And it's something our
21 industry has recognized and accepted, and done our
22 best part to move it forward, and understand that we
23 have to grow the inclusiveness of our industry, for
24 sure.

25 SENATOR LITTLE: Uh-huh.

1 Well, as bad as we are in the North County,
2 we do have a women-owned architectural business.

3 So, I guess that's a check to our area.

4 CAMPBELL WALLACE: That's fantastic.

5 SENATOR LITTLE: Yeah.

6 Thank you very much.

7 SENATOR RITCHIE: Thank you, both.

8 DOMINIC CASSANELLI: Thank you.

9 CAMPBELL WALLACE: Thank you.

10 SENATOR RITCHIE: And with that, we'll be
11 wrapping up here.

12 I would just like to say that we got some
13 really good information today on some of the
14 challenges, but also on some of the things that are
15 going well.

16 Senator Sanders, (indiscernible).

17 SENATOR SANDERS: Thank you.

18 And I want to commend both Chairs for this.

19 I've always had faith in the American people;
20 and, therefore, the people of New York State.

21 I have faith that decent people can grapple
22 with very difficult issues, and come to something --
23 something better, something that hasn't been seen
24 before, something that -- this is an old experiment.

25 This is an experiment, 400 years old, and

1 going, and it's not going be resolved instantly.

2 But if people of good will come together,
3 that we can deal with these things.

4 We're not going to agree on every single
5 thing, but we should agree that we need to put the
6 people of New York State first.

7 And if we can do that, then we can figure
8 something great.

9 So I want to commend the Chairs again, and
10 I want to show how much I believe in this, by taking
11 my summer, and I'm going to go to -- around town,
12 and I'm going to see some places.

13 I always thought the North County was
14 The Bronx, personally.

15 [Laughter.]

16 SENATOR SANDERS: So I'm going to discover
17 some new parts, and see common people trying to live
18 a decent life, and see whatever the challenges they
19 are.

20 And, I know about the challenges of some
21 places.

22 And through this process, we can perhaps come
23 with something that would make all of the
24 New Yorkers say, You know what? They actually earn
25 their pay.

1 To the Chairs, again I say, thank you.

2 And to everybody who sat through this, thank
3 you, on both sides.

4 SENATOR AKSHAR: Yeah, Senator, I think
5 you -- you make a very valid point.

6 I think we all want the same thing. It's
7 just a matter of how we get there.

8 And, you know, I think we heard some
9 recurring themes today.

10 And my guess is, that we'll hear those same
11 themes, whether we're in the North County, we're in
12 Western New York, we're in New York City.

13 And, again, I think that this is an issue,
14 regardless of your political persuasion, that, you
15 know, people want to find some solutions to.

16 So, I'm incredibly pleased that we're doing
17 it in a bipartisan manner.

18 I'm incredibly pleased that we're traveling
19 throughout the state.

20 And I too just want to thank everybody for
21 being here and providing your testimony.

22 I want to thank the staff who do a remarkable
23 job. And, you know, it's relatively easy to be us
24 on a daily basis because we have such great people
25 that work in the backside of the house, and they

1 really carry our water.

2 So, whether it's the staff in the back of the
3 room there that are operating the cameras;

4 Or from counsel's office, Lisa Harris, thank
5 you, and your staff, for all that you do.

6 So, look forward to continuing this
7 conversation throughout the state.

8 Thank you.

9 (Whereupon, at approximately 1:37 p.m.,
10 the joint-committee public hearing held before the
11 New York State Senate Standing Committee on Labor
12 and the Senate Standing Committee on Economic
13 Development, concluded, and adjourned.)

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