

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

4 PUBLIC HEARING:

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

9 Dulles State Office Building
10 11th Floor Conference Room
11 317 Washington Street
12 Watertown, New York

13 July 17, 2018, at 10:00 a.m.

13 PRESIDING:

14 Senator Frederick J. Akshar II (Sponsor)
15 Chairman
16 NYS Senate Standing Committee on Labor

17 Senator Patty Ritchie, Sponsor

18 CO-SPONSORS PRESENT:

19 Senator Betty Little

21 ALSO PRESENT:

22 Senator John J. Bonacic

23 Senator Kemp Hannon

24 Senator Thomas F. O'Mara

25 Senator James Sanders, Jr.

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1 SENATOR RITCHIE: Good morning, everyone.

2 Thank you for coming out this morning.

3 And, we understand having a hearing in July
4 is a little more difficult because there's a lot of
5 things going on, but this is certainly an important
6 subject.

7 This is the New York State Senate's hearing
8 on the MWBE program.

9 I want to welcome the Co-Chair of the Task
10 Force, Senator Akshar.

11 I want to thank Senator Sanders for coming
12 all the way from New York City today to hear the
13 concerns and, you know, the discussion on how we can
14 tweak the program to help those that live in my
15 district.

16 I want to thank Senator Bonacic from coming
17 all the way from Orange County, and Senator O'Mara
18 from coming from...?

19 SENATOR O'MARA: Pulaski this morning.

20 SENATOR RITCHIE: -- Pulaski. All right.

21 So I --

22 SENATOR O'MARA: (Indiscernible) Elmira.

23 SENATOR RITCHIE: Yeah.

24 -- I appreciate you all being here today.

25 I look forward to hearing from the witnesses

1 that are going to provide testimony.

2 Once again, the MWBE program is a program
3 that has a lot of merit, I think people support.

4 But we also know that there are certainly
5 challenges that go along with it, considering the
6 geography, and especially in northern New York.

7 From my district I hear, pretty much, on a
8 daily basis that businesses are struggling to meet
9 the quotas. Are not on possessioned to try to make
10 that happen. Just, they need some changes in the
11 program in order to make that happen.

12 So we appreciate you being here.

13 And with that I will turn it over to
14 Senator Akshar.

15 SENATOR AKSHAR: Senator Ritchie, thank you
16 very much for having us. We appreciate your
17 hospitality.

18 It's good to be in the North Country. It's
19 just a short drive for me from Binghamton, just a
20 couple of hours.

21 I too want to thank Senator Sanders for being
22 here and making the trip all the way from
23 New York City.

24 I thank him because he's been a great friend
25 and a great colleague to all of us on the dais.

1 And, it's important to note that some would
2 think that this Republican Conference is doing these
3 hearings because we don't believe in the program.

4 It's been suggested.

5 And to the contrary, that's not the truth.

6 We do, in fact, care about this program. We
7 think it's a very important program. We want to
8 make this program as effective and efficient as we
9 possibly can.

10 So, Senator Sanders, I want to thank you for
11 bringing your expertise and your knowledge on this
12 issue to the table.

13 Thank you for serving with us to try to find
14 solutions to make this a better program and make it
15 the best it can possibly be.

16 I think the best thing we could have ever
17 hoped for last year was to not expand and keep the
18 existing program in place, to get this one-year
19 grace period, which will allow all of us to work and
20 to find solutions to make the program even better
21 and make it work for everybody, regardless of where
22 we are throughout this great state.

23 So, Senator Ritchie, thank you again for your
24 hospitality, and it's great to be here.

25 Anybody else have any thoughts they want to

1 share?

2 Tommy?

3 SENATOR O'MARA: We're good.

4 SENATOR AKSHAR: Senator?

5 SENATOR BONACIC: We're good.

6 SENATOR AKSHAR: Senator Sanders?

7 SENATOR SANDERS: With your permission?

8 SENATOR RITCHIE: Please, of course.

9 SENATOR SANDERS: Senator Ritchie,
10 Senator Akshar; fellow Senators, incoming and
11 outgoing.

12 I am -- I'm really glad to be here.

13 It's a -- it's a very necessary experience to
14 go from New York City to -- to northern New York to
15 really get an experience in what is going on.

16 It has led me to understand that we need to
17 put a renewed effort to support our fellow
18 New Yorkers; that we have to make sure that this
19 economic boom that is in some parts of the state is
20 shared, and that we need to find ways of ensuring
21 that.

22 One of the ways may be MWBE.

23 Now, anything -- any program made by people
24 is going to have in it flaws, because people are
25 flawed.

1 And that means that people can work at it and
2 see, how do we make it better?

3 If the spirit is to mend it, not end it, then
4 I'm here to be of assistance and see what I can do.

5 If there are ways of making it better that
6 come out of this, then I'm going to champion it.

7 As you may know, I am the father of MWBE in
8 New York City. I wrote Local Law 1 and Local
9 Law 129 in New York City.

10 So I have one or two -- I picked up one or
11 two traits, experiences, on the journey.

12 But this is a very important hearing at a
13 very important place.

14 So I'm here to show a commitment to the
15 north, a commitment that all New York must join in,
16 and this boom that we are going through has to be
17 extended up here.

18 We'll start with this, but Senator Ritchie is
19 already speaking to me about other ways that we can
20 be useful to her district and the districts north.

21 So I'm thanking you for allowing me to be
22 here, and the hospitality that the good people of
23 Watertown have shown so far.

24 Thank you.

25 SENATOR RITCHIE: Thanks, Senator Sanders.

1 SENATOR AKSHAR: So why don't we start with,
2 we'll invite Christina Schneider from Purcell
3 Construction to come up and give testimony.

4 CHRISTINA SCHNEIDER: Hello.

5 SENATOR AKSHAR: Christina, welcome.

6 CHRISTINA SCHNEIDER: Thank you.

7 Thank you, Senator Ritchie, for inviting me.

8 And I apologize, I didn't know all your names
9 at the time, so they're not on my testimony.

10 Just you are, 'cause you're special.

11 Thanks for allowing me to come today.

12 I'm the chief financial officer of Purcell
13 Construction. We're based right here in Watertown,
14 New York.

15 We do projects, we range in size, from about
16 2 million to 50 million dollars around the state in
17 "upstate," what I define as Upstate New York.

18 We have contracts through Empire State
19 Development, New York State Homes and Community
20 Renewal, Department of Health, and DASNY.

21 So we have a full gamut of state contracts
22 and state grants.

23 We recognize the importance of the MWBE
24 program, and I'm not here to tell you to eliminate
25 this program today.

1 I'm here to offer some suggestions on how we
2 can improve it, and I hope that's what you're
3 looking to hear.

4 So I have four major areas that I want to
5 address.

6 One is --

7 And this isn't your first rodeo, I can
8 imagine, so you've heard some of this stuff before.

9 -- but the goals are applied -- the same
10 goals are applied across the board across the state.

11 So 30 percent goals last year were applied in
12 Brooklyn, and were also applied in Watertown,
13 New York.

14 I got to tell you, there's a big difference
15 between Brooklyn and Watertown, New York.

16 Our availability to obtain minority
17 participation in Watertown is very limited, as in
18 upstate. We have to really juggle the system in
19 order to make it work.

20 And I was surprised that Senator Ask --

21 I'm sorry, how do you say your last name?

22 SENATOR AKSHAR: Akshar.

23 CHRISTINA SCHNEIDER: Akshar.

24 SENATOR AKSHAR: You can say it however you
25 want.

1 CHRISTINA SCHNEIDER: Okay.

2 SENATOR AKSHAR: Nobody, especially Bonacic,
3 can't say it.

4 CHRISTINA SCHNEIDER: Okay.

5 SENATOR AKSHAR: So it's okay.

6 CHRISTINA SCHNEIDER: Well, I wouldn't be
7 able to say his name either.

8 -- I was surprised to hear you say that
9 things were kind put on hiatus until you evaluated
10 this.

11 I became aware yesterday of a state
12 procurement that's current, it's out on the street,
13 with a minority goal of 38 percent in
14 Upstate New York.

15 So, I'm concerned about this increase.

16 I'd love to see the data that indicates how
17 38 percent can be useful in Upstate New York.

18 We, as a contracting community, would love to
19 understand how these goals are determined.

20 Obviously, thus far, there hasn't been a lot
21 of thought put into the goals because they're just
22 arbitrarily applied, same goal everywhere in the
23 state.

24 Is -- we're -- I'm very fearful that this
25 38 percent is going to be applied everywhere now

1 also.

2 So I'd encourage you to really dig into that.
3 I can provide your staff with more information after
4 this meeting.

5 So that's my big first point is, you know,
6 these universal application of goals.

7 The second point I have is, I really question
8 whether the term "goals" should be used.

9 I think it's more a mandate, more a quota.

10 I heard Senator Ritchie refer to this as
11 "a quota."

12 And I'm going to give you some specific
13 examples that have happened to our company.

14 We were involved, we were a general
15 contractor on a project in Senator O'Mara's
16 district, in a rural area in Upstate New York where
17 a 30 percent goal was imposed on ESD grant funding.

18 We had -- we knew this was going to be a
19 struggle. We didn't know how we were going to pull
20 this off.

21 So we requested the owner to have a
22 conference call with ESD, and we asked for a waiver.

23 You know, how can we apply for a waiver? We
24 think we can make 20 percent, but 30 percent's going
25 to be a huge stretch for us.

1 So we got on the phone with MWBE compliance
2 officer for ESD who said: No way, no waiver. It's
3 not going to happen. It's going to delay the
4 project six months to a year. I have no idea.
5 I really can't -- I can't help you.

6 So here we are, we're stuck with no ability
7 to apply for a waiver.

8 We also learned on that conference call that
9 the award recipient would be penalized, a portion of
10 the grant would be withheld, if we didn't meet our
11 30 percent goals.

12 That's a big deal for contractors when you're
13 working on a project and your financing is unstable.

14 So here we were in a situation where we
15 couldn't apply for a waiver. We were told we might
16 not get all the money. And we couldn't get paid in
17 the end, maybe, who knows?

18 I was going into this project with just,
19 really, not knowing anything.

20 So what is the waiver process?

21 I'm anxious to hear from others here today in
22 the room, because I've never been through it because
23 those people scared the life out of me.

24 I would love to hear how the waiver process
25 actually works, and why the State is telling people,

1 and discouraging people, to apply for waivers.

2 So these built-in penalties are a big deal
3 for us.

4 We have a DASNY contract that contains
5 200,000 in liquidated damages if we don't comply
6 with the MWBE program.

7 200,000 is big money.

8 So there's no relief through a waiver process
9 and the financial penalties are significant.

10 So these aren't really goals, are they?

11 My third point is, we have a capacity issue
12 in the MWBE, and a performance issue.

13 There aren't enough qualified MWBEs to
14 perform work in certain areas. And I'm sure you've
15 heard that theme throughout.

16 Right now there's so much work and so much
17 demand on these companies, that there's -- they just
18 simply don't have enough resources to meet their
19 contractual obligations.

20 So in construction, like with some
21 industries, more volume doesn't mean more profit.

22 In fact, when you're stretched, and you're
23 mismanaged, more volume can lead to disaster whether
24 you're a minority company or not.

25 More volume doesn't translate.

1 So, we're stretching the limits of our
2 MWBE-certified contractors, and many of the
3 challenges that we face on projects are
4 performance-related.

5 We have several projects that MWBEs simply
6 can't perform.

7 We're having to supplement, we have unhappy
8 clients, we're not making deadlines, and it's
9 causing significant financial hardships for us,
10 because these goals, or quotas, are unrealistic in
11 Upstate New York.

12 My fourth major point is, and this is one
13 that gets to the, kind of, heart of the problem,
14 I think, for Upstate New York, I truly feel that
15 state economic development incentives should be used
16 to promote the local economy.

17 The MWBE mandates here in Watertown, in
18 Corning, in southern New York, force us to go
19 outside our area and hire MWBE contractors from
20 outside the area. We have to bypass qualified
21 contractors in our community.

22 On a recent project right here in Watertown,
23 that was a significant high-profile project, we had
24 to bypass local companies and bring a company in
25 from Buffalo, New York.

1 SENATOR AKSHAR: (Microphone off.)

2 Could you do me a favor --

3 CHRISTINA SCHNEIDER: Sure.

4 SENATOR AKSHAR: -- (indiscernible) because
5 I may not come back to it. I'm sorry.

6 Would you just peel back some of the onion on
7 that particular issue?

8 What happened in that particular case?

9 CHRISTINA SCHNEIDER: Sure.

10 There was a 30 percent goal on this project.
11 It was an ESD grant.

12 It was historic ground -- or, not historic --
13 but a renovation of a downtown building.

14 We got a CFA award. We were the contractor.
15 And the grant was such that we had to find
16 significant MWBE capacity.

17 There's some here in the North Country, but
18 there's not enough. We have -- for -- for -- to
19 find minority contractors we have to go outside the
20 area.

21 SENATOR AKSHAR: This was, like, for facade
22 replacement --

23 CHRISTINA SCHNEIDER: Yeah.

24 SENATOR AKSHAR: -- or something, on a
25 building?

1 CHRISTINA SCHNEIDER: Yep.

2 And interior -- some interior renovations.

3 Yep.

4 SENATOR AKSHAR: Okay.

5 CHRISTINA SCHNEIDER: So the other related
6 story is a project in Senator O'Mara's community,
7 where we had a significant ESD grant, where we were
8 general contractor on a project. Significant money.

9 We had to bypass four highly-qualified local
10 union electricians and go all the way to another
11 community 85 miles away and bring a non-union
12 electrician in to do the job to meet our MWBE goals.

13 The unions weren't happy.

14 We weren't happy.

15 We didn't employ local labor.

16 It's a disaster for local economies to have
17 to shift our dollars outside where the projects are.

18 So we need to reevaluate that whole scene.

19 We need to keep local incentive dollars in the
20 community.

21 So those are my four big points.

22 I know a lot of other people have some --
23 some good things to say, but, in closing, I have,
24 like, kind of three -- three big suggestions.

25 One is: Please, please, dig into how these

1 goals are set, and please try to customize how
2 they're set in each community.

3 Brooklyn and Watertown are not the same area,
4 they shouldn't have the same goals.

5 One of the missing pieces for me, related to
6 the performance issue, is there's no measurement of
7 the performance of the MWBEs.

8 So can we implement some type of performance
9 system that is like a rating system?

10 Oh, yeah, these guys did great on my job over
11 here.

12 Maybe the owners can opine.

13 And then that would allow the State the
14 ability to really determine capacity in local areas.

15 Like, who can really function and perform?

16 I think that would be a great tool for the
17 State when they're trying to evaluate goals.

18 And, lastly, my biggest recommendation is
19 this capacity issue.

20 If we're going to keep going down this path,
21 we need to increase capacity, not only for minority-
22 and women-owned businesses, but for workforce.

23 Construction is experiencing a huge labor
24 gap, okay, just many other industries are as well.

25 But this current program just promotes

1 ownership of MWBE companies.

2 Are we doing enough to promote women and
3 minorities in management and in trades?

4 So I've been working in construction for
5 27 years, a male-dominated industry.

6 This is Emily Zayre (ph.), she's my protegee.
7 She's going to be coming up in the company. She's a
8 Clarkson grad. She chose construction as a career.

9 We need to do more for women and minorities.
10 Not just -- not everybody wants to own a business.

11 Some people want to work for companies.

12 Some people want to work in construction,
13 'cause isn't it fun, Emily?

14 EMILY ZAYRE (ph.): It's fun.

15 CHRISTINA SCHNEIDER: So, really -- really
16 evaluate that, because not everybody's meant to be
17 an owner of a construction company.

18 So we're -- we're missing a whole demographic
19 in our state if we're ignoring trades and management
20 and supervisory personnel in -- for women.

21 So I would encourage you to -- we have strong
22 trade industries, associated general contractors,
23 associated building contractors, our local building
24 exchanges.

25 We're engaged. We can help the education,

1 the recruitment.

2 So we're available to help you on this
3 plight, and I really thank you for your interest.

4 Thanks.

5 SENATOR AKSHAR: Senator.

6 CHRISTINA SCHNEIDER: I don't know, do you --
7 do we do questions --

8 SENATOR SANDERS: Yes.

9 CHRISTINA SCHNEIDER: -- or how's this go?

10 SENATOR RITCHIE: Yes.

11 CHRISTINA SCHNEIDER: Oh, I can get out of
12 here.

13 [Laughter.]

14 SENATOR RITCHIE: I would just like to start
15 off by saying for the record, that we did invite a
16 number of agencies, the second floor, to be here,
17 which we hope, at some hearing in the future, they
18 will be able to attend and hear the comments, so
19 that we can all work together to make the program
20 better.

21 CHRISTINA SCHNEIDER: Great.

22 SENATOR RITCHIE: So your question about the
23 waiver, it would have been helpful if we would have
24 had somebody here from the second floor to answer
25 those questions.

1 So, point well taken.

2 You know, just your comments are things that
3 I have heard, you know, many times; something that
4 I have discussed with my colleagues, including
5 Senator Sanders, about the economic-development
6 issue here in the North Country.

7 And I know, at a meeting that I was at with
8 the people who run the program, the comment came up
9 about capacity and trying to get to the goals.

10 And the response back to me was, that if we
11 couldn't, that it was okay to go to New York City.

12 For me, personally, it isn't okay.

13 CHRISTINA SCHNEIDER: No.

14 SENATOR RITCHIE: We have enough economic
15 struggles here, that going outside the area to hire
16 is not acceptable.

17 And, you know, to talk about capacity, there
18 certainly is an issue there, but it's not like we
19 haven't tried to address capacity here either.

20 We've partnered with the people in Albany who
21 administer the program for a couple boot camps.

22 We sent out, you know, information trying to
23 garner interest.

24 And it still has not done anything for
25 capacity.

1 So I just want to make sure that people
2 understand, it's not like we just didn't try to help
3 encourage.

4 This is going to have to be an aggressive
5 approach in order to get people involved.

6 But, the point that you take about, you know,
7 getting -- getting others into the -- into the
8 business without actually having to own the
9 business, I think is a great opportunity, because
10 you know, it's intimidating for a lot of people.

11 But I think there are other avenues.

12 In your story about not being able to reach
13 the goal, and, potentially, not receiving the rest
14 of the money, that's something that I've heard from
15 a number of companies, to the point now where many
16 companies don't want to bid on any of these projects
17 anymore, which definitely is not what we want to
18 happen.

19 CHRISTINA SCHNEIDER: Yeah.

20 SENATOR RITCHIE: So I appreciate your
21 comments. I certainly appreciate you coming out
22 today.

23 And, with that, I'll turn it over to
24 Senator Akshar.

25 SENATOR AKSHAR: I think it's important to

1 note that, to Senator Sanders' point, this effort of
2 the task force is, in fact, to amend the program,
3 and not to end the program.

4 There's nobody on this dais that wants to do
5 that.

6 And I think it would be beneficial if the
7 Governor's Office would, in fact, participate in
8 this process, and allow the agencies to testify or
9 to be part of this process, so that we could all,
10 collectively, make the program better, because the
11 fact is, we're not looking to end it. We're looking
12 to amend it and make it better.

13 So could you just tell me a little bit about
14 this project that has the 38 percent goal?

15 CHRISTINA SCHNEIDER: 38 percent.

16 SENATOR AKSHAR: What is that project?

17 CHRISTINA SCHNEIDER: Sure.

18 It's a procurement out at SUNY Poly through
19 DASNY.

20 EMILY ZAYRE (ph.): 20 percent minority,
21 12 percent woman-owned, and 6 percent
22 service-disabled.

23 SENATOR AKSHAR: Do you find in -- in --
24 in -- with the service-disabled veterans there's no
25 attention being paid to that, and all the attention

1 paid on the minority and women piece?

2 CHRISTINA SCHNEIDER: It's relatively new.

3 And you know a little bit more about that.

4 Why don't you --

5 EMILY ZAYRE (ph.): Well, it's -- the way
6 that I understand it is that, yes, it's relatively
7 new. And, it's covered under kind of a different
8 executive law; is that correct?

9 Yeah.

10 So -- right, you would have to -- you may
11 want to bypass a service-disabled in order to hire a
12 minority- or women-owned because there's penalties
13 if you don't -- if you don't meet your minority- and
14 women-owned goals. But there's not penalties per se
15 if you don't meet your service-disabled goals.

16 So it doesn't really lend itself well to us,
17 you know, wanting to hire service-disabled unless
18 they can cover one of the other goals as well.

19 SENATOR AKSHAR: So my last question will be
20 about the penalty process and the financial piece.

21 So just walk me through this. I apologize for
22 my ignorance. I'm not a contractor.

23 CHRISTINA SCHNEIDER: That's okay.

24 SENATOR AKSHAR: So you bid a particular
25 project, and you get it, knowing that you have to

1 meet certain goals.

2 CHRISTINA SCHNEIDER: Right.

3 SENATOR AKSHAR: And you say, on the front
4 end of that bid, that I will, in fact, meet my
5 30 percent goal, or whatever the number ends up
6 being. Right?

7 At the end of the day, if you can't do that
8 and they're not receptive to the waiver process,
9 you've been subject to financial penalty before?

10 CHRISTINA SCHNEIDER: Actually, we have not.
11 We've just been very aware.

12 Like, one of our contracts right now has a
13 \$200,000 fine if we -- you know, if we don't comply.

14 And then the other penalty would have been
15 for the owner not receiving the grant.

16 The problem, just to clarify, of the
17 construction process, the day that we put in the
18 bid, we're all optimistic; we're going to do this,
19 we're going to meet these goals.

20 And then stuff happens.

21 Contracts fail.

22 People, yeah, get busy and say, So sorry.
23 I took this job over here. I can't help you.

24 It's a dynamic, constantly moving process.
25 And you're, literally, holding your breath till the

1 very end to see where the numbers come.

2 And it's extremely stressful and extremely
3 dynamic, and there's like no tolerance.

4 SENATOR AKSHAR: But you paying -- you being
5 very diligent and paying attention to that has
6 forced your company to have to go elsewhere --

7 CHRISTINA SCHNEIDER: That's right.

8 SENATOR AKSHAR: -- outside of the
9 North Country.

10 CHRISTINA SCHNEIDER: That's right.

11 SENATOR AKSHAR: Pass up people who are ready
12 and able to work on these projects, and give the
13 work to people in Buffalo or Binghamton or Brooklyn?

14 CHRISTINA SCHNEIDER: Yeah, at a premium.

15 SENATOR AKSHAR: Right, which, by the way --

16 CHRISTINA SCHNEIDER: People aren't coming --

17 SENATOR AKSHAR: -- the taxpayer is paying
18 for.

19 CHRISTINA SCHNEIDER: No question.

20 SENATOR AKSHAR: Right?

21 CHRISTINA SCHNEIDER: And people are not
22 coming to Watertown, New York, voluntarily. We're
23 having to beg.

24 SENATOR AKSHAR: Senator Sanders
25 (indiscernible).

1 SENATOR SANDERS: (Indiscernible.)

2 SENATOR AKSHAR: That's right.

3 SENATOR SANDERS: Great place.

4 CHRISTINA SCHNEIDER: Yeah, in the summer.

5 So, yeah, you've pegged it.

6 It's very difficult. And we do have to go

7 out of the area very -- I mean, that's the norm.

8 That's not -- it's not the standard to look -- to
9 find MWBEs in your area.

10 SENATOR AKSHAR: Great.

11 Senator O'Mara.

12 SENATOR O'MARA: Ah, yes.

13 Thank you, Christina (sic). That was an
14 excellent presentation.

15 I agree with -- 100 percent with all the
16 points you make.

17 And, in particular, the last point you make,
18 about spending our economic-development dollars
19 outside of the region they're intended to benefit,
20 has been a pet peeve of mine, because of this, for
21 sometime now.

22 I do want to note for the record, that I find
23 the second floor, the Governor's, lack of
24 involvement in this process to be, at best,
25 disrespectful to all of us here on this dais, and

1 disrespectful to everybody in this room that's
2 concerned about this issue.

3 We have been hitting a brick wall with the
4 Governor's Office for years on this issue.

5 These quota/mandate numbers came out of thin
6 air.

7 I put direct responsibility of this on the
8 Governor's counsel, Alphonso David, that dreamed up
9 these mandates and quotas; yet they failed to get
10 into negotiations with us and try to deal to fix
11 these issues.

12 And their lack of involvement in these
13 hearings is just completely disrespectful to all of
14 us, and is personally offensive to me.

15 I would like to, if you could characterize,
16 or quantify, what kind of cost increases you see
17 having to go to MWBEs outside the region, and how
18 that affects the overall cost of the job?

19 CHRISTINA SCHNEIDER: Do you have a feel for
20 that?

21 If my estimator was here, we could rattle off
22 figures.

23 I -- I -- I don't totally feel comfortable
24 quoting numbers because I'm just not knowledgeable
25 enough on it, but it does cost more.

1 There's travel expense --

2 OFF-CAMERA SENATOR: Can you follow up on
3 that?

4 CHRISTINA SCHNEIDER: -- sure.

5 We'll follow up.

6 We can follow up on that?

7 SENATOR AKSHAR: Of course.

8 CHRISTINA SCHNEIDER: We'd be glad to.

9 SENATOR O'MARA: When you have to search far
10 and wide to find a company to qualify, to meet these
11 quotas, what do you find the quality of work to be
12 compared to local contractors or regional
13 contractors that you're more accustomed to dealing
14 with?

15 CHRISTINA SCHNEIDER: It's terrible.

16 SENATOR SANDERS: How much time do you have
17 to spend cleaning up for their shoddy work?

18 CHRISTINA SCHNEIDER: A lot.

19 SENATOR O'MARA: Thank you.

20 SENATOR AKSHAR: Of course.

21 But, first, allow me to welcome and introduce
22 Senator Little, our distinguished colleague, who has
23 joined us on the dais.

24 Senator, go ahead.

25 SENATOR BONACIC: Miss Schneider, thank you

1 for a very informative presentation.

2 I'd like to thank Senator Ritchie,
3 Senator Akshar, for holding this conference.

4 I'm going to retire at the end of the year.

5 OFF-CAMERA SPEAKER: Oh, no.

6 SENATOR BONACIC: So I don't have to say
7 things that are soundbites to get re-elected.

8 CHRISTINA SCHNEIDER: Great. Let it go.

9 SENATOR BONACIC: I've done that for
10 20 years.

11 Let's talk about what's happening in
12 New York.

13 Two people are leaving for every one that's
14 coming in, and the people that are coming in are
15 looking for the benefits. How can government help
16 them get social benefits?

17 The people at this dais fight for the upstate
18 economy.

19 It's a war. We have it every year when
20 budget time.

21 And this program reminds me of the
22 minimum-wage fight, where the Governor started with
23 \$15 for the whole state.

24 We say upstate is in recession. They
25 can't -- small businesses will be gone if do you

1 this.

2 Now I have never been to Watertown, but
3 I came up yesterday.

4 I talked to about 10 people.

5 I talked to ship people on the boat tourism.

6 I talked to waitresses.

7 I talked to hotel people.

8 I talked to the retail people.

9 How are you doing up here?

10 Things are slow. The economy is slow. Not
11 as good as it should be.

12 While we talk about this program, the
13 Governor's initiative is solely for political
14 pandering to women for the elections.

15 So we're not going to make progress.

16 We could talk, but we are not going to make
17 progress between now and the election.

18 Women vote more than men.

19 So all he cares about, and what has dominated
20 in the last five years, is politics, not good public
21 policy.

22 This is an example of it.

23 It may work in a metropolitan area, but it
24 sure as heck doesn't work upstate.

25 And you've made that clear, and I don't mean

1 to be so blunt, but that's what we fight every day;
2 not to kill the program, because we believe in women
3 empowerment. We want to see qualified women work
4 more.

5 And by the way, we opened up a resort casino
6 in Sullivan County. 70 percent women jobs out of
7 about 2,000 jobs.

8 We like to see that, but they have to be
9 qualified.

10 And sometimes the job doesn't match the
11 person, which you spoke so eloquently about.

12 So, for the time that I'm here, and for the
13 warriors that are still going on, we will try to
14 amend this program to make it more upstate to
15 New York needs.

16 And I thank you for speaking.

17 And I thank Senator O'Mara for having the
18 courage to speak out loud of what the facts are
19 really like, being a realist.

20 Thank you, Miss Schneider.

21 CHRISTINA SCHNEIDER: Thank you.

22 Thank you for your candor.

23 SENATOR AKSHAR: Senator Sanders, do you have
24 questions?

25 SENATOR SANDERS: I will, but I'll yield to

1 Senator Little first.

2 SENATOR AKSHAR: Senator Little.

3 SENATOR LITTLE: Yes, I do.

4 Thank you.

5 I'm sorry I was a little bit late, but we
6 started out early.

7 So, thank you for having this.

8 And, we've been involved in this for a long
9 time.

10 I just want to thank you, because your
11 testimony brings out all the points that we've been
12 talking about, but you have very specific examples.

13 And, you know, Senator Ritchie mentioned
14 having the State here.

15 We're in a state office building.

16 Is there anyone here from the labor
17 department or economic development, state offices,
18 or DEC, or any of those offices that are probably --
19 I don't have a state office building in Glens Falls,
20 but, they're probably in this office.

21 So, we have to make sure that we get these
22 people at our next hearing; but, it's a good point.

23 But, the one thing you brought up, and it's
24 something that I don't think has gotten enough
25 attention, is, you know, with -- when we're spending

1 state money, we want to spend less of it so we have
2 lower taxes, but we also want to get best value for
3 the dollars we're spending.

4 And, in my mind, best value has just fallen
5 right off the table with these goals and all.

6 And evaluating being an MWOB is one thing.

7 The certification's hard to get. The
8 recertification happens too quickly.

9 That's another problem.

10 But once you are there, we ought to be able
11 to rate them, because I know a contractor who had
12 one, and hired an MWOB for asbestos removal, and
13 they could not do it. And then they had to scurry
14 around after firing them, and come up with another
15 contractor that really wasn't the best contractor to
16 do the job anyway.

17 So, good points that you brought up.

18 And as we said, these things would improve
19 the program, and would make it more reasonable and
20 more beneficial to local businesses in our area.

21 So thank you for being here.

22 SENATOR AKSHAR: Senator Sanders?

23 SENATOR SANDERS: Sure.

24 Thank you for your points that you've raised.

25 I too will encourage the second floor to

1 participate.

2 That it's just good to hear what people --
3 these are the people of New York. These are our
4 bosses.

5 It's good to hear what your boss thinks. It
6 doesn't hurt.

7 I will encourage them to participate also.

8 As a Marine Corps vet, I kind of liked
9 hearing the service goals that were mentioned.

10 I know it's a new program, and it will take a
11 little bit of time to get right.

12 I do want to alert people that it's not a
13 MWBE goal, mind you. That's a -- it's a different
14 program, and it shouldn't be seen as 38 percent
15 MWBE.

16 It's possible to do a rating system that had
17 been described. But it's fairer if you rate -- if
18 you rate everyone. That way, you don't fall into
19 any holes or traps of any type.

20 If you rate everybody involved, then you
21 could do that, and you could actually do the rating
22 system that you speak of.

23 And we downstaters have the same complaint
24 that you have.

25 We too see jobs and companies coming into

1 these communities and the local folk are not
2 getting.

3 So that may be a point where -- of agreement
4 that we can have.

5 We too want local folk to get whatever is
6 local.

7 If it's money in Watertown, I suspect that
8 people in Watertown could spend the money-- you guys
9 can spend it wisely up here, couldn't you?

10 CHRISTINA SCHNEIDER: Yes, we could.

11 SENATOR SANDERS: Well, then, if that's the
12 case, then that money should stay up here.

13 CHRISTINA SCHNEIDER: That's right.

14 SENATOR SANDERS: And the people in Brooklyn,
15 the same, et cetera.

16 So there may be common ground that we can
17 speak of, where we can figure out, how do we make
18 sure that the money gets there?

19 Now, notice that we're speaking of a goal of
20 30 percent. We're not speaking of the 70 percent.

21 Now much of that, if not most, is going to
22 the big boys; the same guys who always get, and
23 they're not from Watertown either.

24 They are the big guys who, you know, perhaps
25 are untouchable, whatever, but they're not the local

1 folk from here and other places.

2 While we look at that 30 percent, don't cheat
3 yourself out of that 70 percent.

4 If we're going to look at it, let's look at
5 it real hard, because there's far more money in
6 70 percent.

7 And I want to you have every dollar that you
8 deserve up here.

9 We are -- there is a Supreme Court decision
10 called the "Croson" decision, which said -- which
11 informs much of what we do. And we're allowed to do
12 many different things, but you can't mess with the
13 Supreme Court.

14 And under those conditions, when they set
15 goals of 30 percent, it -- it -- there may not be a
16 lot of people of color up here, but there are a lot
17 of women up here.

18 And if -- and women are under that "MWBE."

19 CHRISTINA SCHNEIDER: MWVBs,
20 service-disabled.

21 SENATOR SANDERS: I like it.

22 CHRISTINA SCHNEIDER: Fort Drum.

23 SENATOR SANDERS: Well -- oh, yes, right. We
24 have them right up here.

25 So under those conditions, it may -- we may

1 be -- perhaps you're looking at it wrong.

2 Perhaps we need to be more flexible and say,
3 okay, maybe there aren't a lot of people of color up
4 here, but, are we encouraging the women to get into
5 the business, or, are we looking at them?

6 Just some points.

7 And -- but I thank you for putting those
8 things out, and I think, so far, it's a great
9 hearing.

10 Chairs.

11 SENATOR AKSHAR: Thank you.

12 Anybody else?

13 Okay.

14 Thank you very much, Christina.

15 SENATOR RITCHIE: Thank you.

16 SENATOR AKSHAR: Appreciate your time.

17 So let me do this, I'll be the bad guy in the
18 hearing:

19 In an effort to keep things moving, I think
20 I'll call -- we'll call two people up to testify
21 next.

22 Excuse me.

23 All right. So let me call Greg Lancette,
24 Central Northern New York Building and Construction
25 Trades Council, as well as, Pat Carroll, the

1 business manager for Local 73.

2 Would you both come up and provide testimony,
3 please?

4 GREG LANCETTE: Good morning, Senators.

5 Thank you very much for taking the time to do
6 this, especially in the, quote, off-season, when
7 there's actually no-off season.

8 Pat Carroll is actually going to read his
9 statement that he had prepared, and then I will be
10 elaborating on our talking points also.

11 Thank you.

12 PATRICK CARROLL: He's the puppeteer over
13 here, so we're doing good with that.

14 Thanks, Senators, for taking this task on;
15 I really do appreciate it.

16 I did have the opportunity to speak at the
17 first roundtable in Albany, and I think it went very
18 well. And I'm glad that it's -- this is what it's
19 grown into, so...

20 All right. My name is Patrick Carroll. I'm
21 the business manager of Plumbers and Steamfitters
22 Local 73 in Oswego, New York.

23 In regards to the Article 15-A, in 1988 the
24 legislation created the office of minority and
25 women's business development, right, to develop

1 participation goals for the minorities and women
2 businesses in state projects.

3 I believe the original goal was 20 percent,
4 which compromised (sic) the labor, the services,
5 supplies, equipment, and material, or some
6 combination of.

7 In 2014 Governor Cuomo directed the division
8 increase participation to 30 percent. All right?

9 This is based on a study that stated
10 55 percent of the construction companies are owned
11 by women and minorities, the study that came into
12 question during my first roundtable.

13 The mechanical contractors who are
14 represented are unable to sublet their labor portion
15 of the contract to other companies unless they are
16 also union-affiliated contractors.

17 If they do, they would violate the terms of
18 our agreement of collective bargaining.

19 Many of these projects require specific
20 equipment on the job.

21 Most of the mechanical equipment required on
22 these jobs are spec'd and do not qualify for
23 WMBE (sic) credits, in which the mechanical portion
24 of it is usually a very large portion of the bid,
25 so, which limits our opportunities for the labor and

1 the existing material part.

2 I recently reviewed the New York State's
3 directory of certified firms and found very few that
4 deal with construction, and even fewer that service
5 the real upstate and northern New York.

6 I did notice there were several from out of
7 state.

8 What once was a good idea has now become a
9 burden for us, specifically in the North Country.

10 The demographics of the counties I represent,
11 Cayuga, Oswego, St. Lawrence, and Jefferson, are,
12 roughly, 88 to 90 percent White, 50 percent women,
13 and very small of minorities.

14 We as the building trades struggle yearly in
15 a recruitment of minorities to help us with boots on
16 the ground, and it's not from lack of effort,
17 because we attend all the state, schools,
18 high schools, the BOCES, every job fair that we can
19 attend, we're there, putting our name out to recruit
20 these people.

21 Recently just took in a class of
22 12 apprentices; one Latino boy and one woman.

23 The Latino boy was very qualified.

24 The young lady was not.

25 It was such a struggle to reach these goals,

1 we have to bring some of these -- some more
2 minorities into the program. And I'm sure she'll be
3 fine after five years of school.

4 But that's a task that the building trades
5 has to address in the North Country.

6 But, by their unable -- or, their inability
7 to reach these goals, it requires our contractors
8 reach far and wide to bring in these WMBE (sic)
9 contractors. Right?

10 And to the lady's point prior to us, that's
11 chasing the dollar from out of town and bring it --
12 when these people come in here to work, they bring
13 that money back to their communities and it doesn't
14 stay here.

15 I mean, I've personally worked all over the
16 country, as far away as Arizona, and I know what
17 that's like.

18 You make your money there. You support your
19 family here in Upstate New York, and that's where
20 the money comes back to.

21 Nobody in Phoenix, Arizona, other than a few
22 restaurants and the hotel that I stayed in,
23 benefited from my ability to work there.

24 But, I do have a few suggestions I'd like to
25 offer.

1 And it's -- one is, the survey.

2 I think we do need to determine the actual
3 number of minority-owned contractors and the
4 services they provide.

5 Because I did notice --

6 Bless you, Senator.

7 OFF-CAMERA SENATOR: (Indiscernible.)

8 PATRICK CARROLL: -- I did notice that a lot
9 of the areas in construction were site work,
10 gardening, some stuff that's really not the stuff
11 that we're looking at as far as mechanical
12 contractors that Greg and I represent.

13 As the woman previous to me stated, if we
14 could run 30 percent in the city, let's do
15 30 percent in the city.

16 If it's 20 percent in the Albany, Hudson
17 Valley, do 20 percent.

18 If it's 10 percent in Upstate New York, then
19 I think that's the goal we need to look towards.

20 Let's cut down on the red tape to qualify
21 these WMBE (sic) contractors.

22 And I don't think we should penalize the ones
23 who have become successful, and which also limits
24 our pool even more. And I know that was brought up
25 in the Albany area.

1 And back to the veterans, I brought that to
2 your attention in Albany.

3 And I think that -- I know it's a separate
4 law, but if we could supplement the use of veteran,
5 either -owned businesses or members, to reach those
6 goals, I think that's a big thanks, especially with
7 Fort Drum being here in Watertown.

8 That's all I got to say.

9 And I think, as well as I know Greg, he's
10 going to be able to run with this one, so...

11 GREG LANCETTE: Well, Senators, how do you
12 want to handle that?

13 Did you want to ask Pat questions first, or
14 would you rather ask us both, collectively?

15 SENATOR AKSHAR: Yeah, why don't you go ahead
16 and give us your testimony, Greg, and we'll ask you
17 both questions.

18 GREG LANCETTE: Yeah, okay. Very good.

19 Thank you.

20 So, yes, Pat and I are both -- we both run
21 our United Association local unions.

22 Pat's up here.

23 I actually cover down into Senator O'Mara's
24 area, to the Pennsylvania border.

25 But I don't come into your area,

1 Senator Akshar.

2 We are seeing this, it's actually on a
3 statewide level.

4 So, our building trades council goes from
5 Canada to Cortland County, Little Falls to Cayuga
6 County. So it's a pretty good geographic footprint
7 that includes the cities of Syracuse, Utica, Oswego,
8 and here in Watertown.

9 And even the four cities, just in our
10 building trades council, there's four different
11 totally different demographic compositions in the
12 region.

13 So, instead of trying to point out a lot of
14 the obvious things that a lot of the great speakers
15 have said over the last couple of -- you know, the
16 previous hearing in Albany, and what you're going to
17 hear today, and what we've already heard today from
18 the contracting community, what we're seeing here
19 is, we're seeing that there is a cost escalation
20 going on in public work.

21 I don't have a hard number to give you, but
22 I would not be shocked to say 10 to 15 percent,
23 because, you know, as the previous speaker has
24 spoken, and I will never suggest that that's how
25 they are operating, but if you're bidding a project

1 as a contractor, you're now entering a higher-risk
2 management component into the construction industry,
3 because the construction industry is challenging
4 enough as it is, just meeting customers' schedules
5 and deadlines, and obligations with your own
6 staffing and in contracting.

7 But now, with the potential for the penalties
8 and the mitigation, that's being baked into your
9 pricing. It absolutely is.

10 I mean, the employers are taking on more
11 risk, but they're taking on less potential for
12 reward, so they're covering the risk.

13 You're not seeing it in the line item, but if
14 you carefully watch some of the ESD projects, or any
15 of that, if there was a way to track it, you will
16 see that it is slowly, steadily rising.

17 And it's not our cost of living.

18 Our cost of living has been around 2 percent,
19 steady, for the last few years. They haven't varied
20 that much.

21 Materials haven't gone up tremendously. Some
22 of them are commodities, so they're a little bit
23 fluctuating, but typically not.

24 So one of the things that I would like to
25 talk about, and, you know, all of the speakers are

1 touching around it, and we're actually hitting it
2 pretty well, but, you know, the potential for some
3 of the solutions could be similar to, like, the
4 regional economic development councils are
5 footprinted and formatted throughout the state.
6 I believe there's 10 councils.

7 And if the State were to actually commission
8 population studies, and even if they paired it with
9 disparity studies, in the 10 regions, and then the
10 region that the project falls in, maybe it falls
11 into that disparity and demographic of the residents
12 of that area.

13 Because, you know, as the last speaker, and
14 as Pat has just spoken, you know, we are really big
15 on hire local. You know, the buy local, my local,
16 programs; everything from the farmers markets, to
17 the small neighborhood store, to the labor
18 workforce.

19 I mean, it's always been our mantra "to keep
20 the construction dollars home," and, that way, it
21 benefits, because it really is not a union thing or
22 a non-union thing.

23 It's when there's unemployed drywallers
24 living in Watertown, and there's drywallers coming
25 in from Western New York, just to fill a column, you

1 know, for example, I mean, we're missing the mark on
2 so many different ways.

3 So if we could look at maybe the demographics
4 or the regional footprint with the red-sea
5 footprints.

6 Another thing that I have suggested to other
7 members of the Senate, that are not here today, in
8 all fairness, would be to start a bonding program,
9 New York State.

10 Because, regardless on your status, we have
11 been encouraging members to go into business as
12 contractors.

13 As the trades, we firmly believe that some of
14 the best employers, with the long-term
15 relationships, are currently in our rank and file as
16 memberships, that know the industry.

17 Over the last 10 years or so, the trades have
18 been really trying hard, and doing a lot better, at
19 recruiting members that actually represent and
20 reflect the community that we service.

21 And those numbers have been coming.

22 But the second stage of that is to develop an
23 employer base out of that.

24 And so anybody that goes into business,
25 regardless of your status, for the bonding in the

1 industry that we're in, you have to show 24 months
2 of positive cash flow before you're eligible for the
3 first tier of pricing with the bonding and the
4 insurances.

5 Well, okay, so if you're starting out in a
6 business, you're not going to have 24 months of
7 positive cash flow.

8 So what they then do, the industry does, is
9 it turns to your personal financials.

10 And, in most cases, anybody that's going into
11 business, they've already pushed everything all in.

12 They've remortgaged the house, they've cashed
13 in all of their assets to get the equipment, the
14 tools, and their business plan together.

15 So the bonding capacity is what's lacking in
16 the whole construction community, and it would
17 benefit the whole community, including the minority.

18 So, you know, something as simple as --

19 I'm probably going to try to put a statement
20 out there and take us to a place that we can't get
21 to.

22 -- but even if the New York State common
23 pension fund had a very small sliver of an
24 investment in a bonding program.

25 And if we could couple that with a WDI

1 initiative (the workforce development initiative),
2 which is actually a product of the Senate Majority,
3 it's been a product for years of workforce
4 development.

5 Great program.

6 If we could open some of that programming up
7 to business development, alongside with career
8 development for craft workers in the industry,
9 I think that will go a long way.

10 Now, it won't wave a magic wand and fix
11 things tomorrow, but you could see a three-year
12 difference that could be exponential, or a five-year
13 difference.

14 It's not that far down the road where it
15 would actually make a difference.

16 So -- but with that being said, I want to
17 thank you for your time.

18 And I don't want to just keep adding too much
19 to the soup, but there are ways to do this.

20 And the one year that we have, if we could
21 get some of the pieces in place to do it right, the
22 state could be a much better place for it, because,
23 as the last speaker had said, she's not wrong, when
24 she's talking about trying to submit minority
25 utilization plans.

1 Like, if they're a potential awardee of a
2 contract, you have to submit your minority
3 utilization plan, and then that's reviewed for
4 criteria and everything else, make sure all the
5 buckets are checked off.

6 And, if somebody does balk on them, they have
7 to scramble to fill a hole, because the plan is
8 still the plan, you're still supposed to meet it.

9 And by doing that, it's adding costs to it,
10 and it's also importing folks in and out.

11 So -- but thank you for your time, and I'm
12 more than happy to answer any of the questions that
13 you have.

14 SENATOR AKSHAR: Senator Ritchie.

15 SENATOR RITCHIE: Have you heard from
16 companies that they are hesitant to bid on projects
17 now because of the unknown?

18 GREG LANCETTE: I have.

19 We have some typical general contractors that
20 we work with, that are now choosing to go -- they're
21 gravitating towards the private work, where they
22 used to have a pretty steady diet of both public and
23 private work.

24 It's kind of like spilling water on the
25 floor, it takes the path of least resistance.

1 So some of the private development that's
2 going on is what's attracting some of the firms that
3 actually have capacity and horsepower, but it may be
4 the difference between submitting this much paper on
5 a project and this much (indicating), and it doesn't
6 have the financial component and the hardships that
7 could potentially come with it.

8 So, yes, Senator, we do see that going on.

9 SENATOR RITCHIE: Just a comment for Pat.

10 I appreciated your suggestion at the
11 roundtable that we look at veterans because of the
12 dynamics of this district; the fact that we can't
13 seem to meet the quotas for legitimate reasons, but
14 that, potentially, the veteran market could
15 certainly help that situation.

16 And I hope that's something that this panel
17 will take into consideration at the end when we're
18 trying to figure out ways to improve the program.

19 Thank you.

20 PATRICK CARROLL: Thanks, Senator.

21 SENATOR AKSHAR: Senator O'Mara.

22 SENATOR O'MARA: Yes.

23 Thank you, Pat and Greg, both, for being
24 here, and for the excellent work you do in
25 representing your memberships and associations.

1 We do appreciate your input here at this
2 forum, and in many other forums that you participate
3 in.

4 Greg, you mentioned the basic increase in
5 wages, I guess, that the term you used is about
6 2 percent a year, but we're seeing higher increases
7 in contracting costs than that, I assume, to take
8 into account this risk and the lack of surety that
9 you're talking about.

10 So how much is that growing over that
11 2 percent that we have been --

12 GREG LANCETTE: Well -- so, without being
13 able to put a hard-stop number to it, I would say
14 10 percent is a conservative number where cost
15 escalation is happening. And I'm not even going to
16 ask anybody behind me to nod or validate, or any of
17 that, because that's not the purpose of it.

18 But, you know, whether it's the SUNY projects
19 or any of the building that's going on with the
20 State funding that has those components, the costs
21 are going up because the level of risk has also gone
22 up.

23 It's not just "come and build a project"
24 anymore.

25 And, you know, like Pat has spoken, and some

1 of the others, and, Senator Ritchie, you are spot
2 on, about trying to break some of the silos down,
3 because that is a way that you can, anatomically,
4 hit some of the goals of the overall goal.

5 If there's a target number where we can help
6 folks, well, maybe it is heavy on the W, or maybe
7 it's heavier on -- or including the vet population,
8 and all that.

9 We have a tremendous amount of returning
10 service men and women that are coming back, and
11 their lives aren't the same, and their jobs aren't
12 there; they're not. They've been gone for a while.

13 So -- from the programs.

14 But, yes, Senator O'Mara, 10 percent is a
15 good number.

16 It may even be higher, but I don't want to
17 get out of anybody's comfort zone and be on the
18 cover of the newspaper tomorrow, if I can avoid
19 that.

20 SENATOR O'MARA: It may be too late.

21 [Laughter.]

22 SENATOR O'MARA: Pat, I appreciate your
23 comments on the regionalization concept of this.
24 I've thought of that a lot.

25 And I think what you see, certainly

1 represented here at this table, are two of the most
2 difficult economies in the state; that being the
3 North Country, where we have both our Senators from
4 there, and the Southern Tier. Between Fred, John,
5 and myself, we cover from Hornell, New York, to the
6 Hudson River, along the Southern Tier.

7 So we have struggling economies.

8 That's why it's of such great interest and
9 importance to us, and that every
10 economic-development dollar that we have stays
11 within the region and not goes outside of it.

12 But I'm very supportive of looking at,
13 somehow, regionalizing of these standards to meet.

14 So, thank you both for your input on that.

15 GREG LANCETTE: Thank you.

16 PATRICK CARROLL: Thank you, Senator.

17 SENATOR AKSHAR: Senator Sanders.

18 SENATOR SANDERS: Sure.

19 Thank you both for testifying again and
20 again. Some of you are part of the traveling
21 routine that we're going to do.

22 For those who don't know, our Chairs have
23 been -- made a commitment to all of New York State,
24 and are fulfilling their commitment.

25 They have done hearings all over the place,

1 and they intend to continue.

2 It's hard to tailor -- I was trying to think
3 of solutions.

4 It's hard to tailor an MWBE program by
5 region.

6 I don't know of any state that has done it
7 that way.

8 Doesn't mean it can't be done, mind you.
9 Just because nobody -- that's why we're the
10 Empire State.

11 It may be a good idea for a bipartisan group
12 of us Senators -- mind you, we don't have to wait
13 for second floor, other great places -- it may be a
14 good idea for us to go to DOJ (department of
15 justice) down in D.C., and say, Hey, is this
16 possible?

17 Is this possible?

18 Once they say it's possible, then that should
19 aid our efforts. And it should mean that we should
20 stay out of trouble with -- you know, with anyone.

21 So it may be a good idea for -- at the end of
22 everything, to come up with some concepts and go
23 down there.

24 I've been there on different issues, so I'd
25 be delighted to go with you on it.

1 Your idea, Mr. Lancette, of dealing with
2 bonding, and several other things, is a good one.

3 You're probably -- you're right, you're
4 probably going to be flying a lead balloon if you
5 say "pensions," but I got you a wing.

6 GREG LANCETTE: I'm all ears, Senator.

7 SENATOR SANDERS: Well -- well, I got it for
8 you. And I'm trusting that my colleagues will join
9 me in this.

10 I have a bill for what's called a "public
11 bank."

12 Public bank.

13 Right now, New York State puts all of our tax
14 money into these large banks, you know, the giant
15 names, and we get a very miserable return on
16 investment.

17 I mean, they're like they're doing us a
18 favor.

19 Imagine taking 10 percent, 10 percent won't
20 cripple them, and put it into a public bank whose
21 job is to -- they have one in Wisconsin -- whose job
22 is to make sure that we support growing businesses,
23 that we support this type of stuff.

24 And, therefore, the bonding could be taken
25 into that, and things of that nature.

1 10 percent won't hurt the giants, but it will
2 help New Yorkers.

3 My bill is there, and I'd be delighted to
4 share with my colleagues more information.

5 Incidentally, that bank in Wisconsin,
6 I believe, that has this, is the only bank in the --
7 during the 2008 mortgage meltdown, they boasted a
8 profit, because they didn't make any risky loans,
9 they didn't do any of this junk stuff, so they
10 steadily turned a profit.

11 We need to consider new and different ways.

12 If we're going to drill down, if we're going
13 to solve these problems of the new people starting
14 out, creating a business, whether it be from,
15 hopefully, Local 73, or other places, they have to
16 have some source. After they put their house up and
17 after they do all of this stuff, they have to have
18 some source.

19 I think that the default rate of the public
20 bank is less than 2 percent, which means that that's
21 a dang good investment for the State.

22 You mentioned a survey.

23 It would be good to do a survey, an actual
24 survey, of who's out there.

25 But, again, after all is said and done, we

1 got to figure a way to grow and develop capacity,
2 wherever it is, and, keep the money -- keep
3 Watertown money in Watertown. And other places, of
4 course.

5 SENATOR AKSHAR: Senator O'Mara has a
6 follow-up.

7 Thank you, Senator Sanders.

8 SENATOR O'MARA: I have a follow-up.

9 I forget which one of you mentioned about the
10 difficulty of sending your members to other areas of
11 the state to work on jobs for -- was that based on
12 them not being a minority or a woman worker?

13 PATRICK CARROLL: No.

14 I just commented -- I commented on the fact
15 that our members do go all over. And I was --
16 I being one of them, have traveled all over to
17 secure work, right, when work is not booming here in
18 New York.

19 And it has nothing -- it's not
20 minority-driven at all, why they can't go to work.

21 SENATOR O'MARA: All right. Because I had
22 heard something from Ernie Hartman down at IBEW,
23 that, you know, there was a lot of work when the
24 Buffalo Billion projects were kicking off, and they
25 were looking for workers, because there was a

1 shortage of workers at the time. And the IBEW
2 wanted to send workers.

3 And they said, Well, if they're not female or
4 minority, don't send them, we don't want them.

5 Do you see that?

6 PATRICK CARROLL: We did see that, and that
7 was, in the Buffalo area, they were need of plumbers
8 and pipefitters. And they -- if they were not a
9 woman or minority, they couldn't put them on the job
10 to reach those goals.

11 Yeah, a lot of people stayed home because of
12 that.

13 GREG LANCETTE: And I would agree with that,
14 Senator.

15 We've actually seen it statewide, starting
16 from GlobalFoundries a few years back, down to,
17 Senator, your casino is one of the larger ones. And
18 we actually had to do that at Tioga Downs down in
19 Tioga County, inclusive of the Buffalo project.

20 So, it's not uncommon.

21 So, with me being headquartered in Syracuse,
22 I have a little more diversity, so to speak, a pool
23 to draw from from the members.

24 So some of our members had some really good
25 opportunities to go all over the state, but they

1 couldn't really bring anybody with them unless they
2 kind of looked like them, in a way.

3 But it was to fill some of the mandates and
4 help assist with the crew compositions in the region
5 that was lacking.

6 SENATOR O'MARA: Because I think, to that
7 point, you know, we're not seeing as strong of --
8 we're seeing complaining from the thruway corridors,
9 I'll refer to it, from the Buffalo, Rochester,
10 Syracuse, Albany cities, because they do have that
11 greater diversity to help meet these challenging
12 goals.

13 And that's perhaps why we -- from the
14 Southern Tier and the North Country, we really don't
15 have that diversity of population, struggle with it
16 much more, in trying to meet those same kind of
17 quotas that the other regions that are more
18 diversified have.

19 So, I appreciate that input.

20 PATRICK CARROLL: If could I just make one
21 comment on the use of the veterans, in the -- the
22 building trades, and all of us, we utilize "helmets
23 to hard hats," right, as a direct avenue for people
24 coming out of the military to get into the trade
25 unions, regardless, whatever interests they have,

1 right, whether it's pipefitters, laborers,
2 carpenters, or whatever, that's there.

3 The United Association that Greg and I are
4 with also have VIP in piping.

5 We're going on these bases and we're teaching
6 these men and women how to weld, how to get into the
7 pipefitting industry. And we receive notifications
8 from all over the country, if somebody wants to
9 relocate in our areas and -- it's open arms.

10 I mean, 30 years ago we weren't looking to do
11 that, whether it was minorities, or even bring the
12 veteran in.

13 But, we've all changed that, and it's huge.

14 And I never looked at the demographics in my
15 area until we started talking at this.

16 I'm, like, Why?

17 Why am I struggling so much to have --
18 50 percent of the people in my area are women,
19 they're not coming in.

20 I don't know how we can't get them in.

21 You know, and we're struggling with that.

22 But, as Greg stated, we bring them in, and
23 that's the best place to start a business, is from
24 the ground, up.

25 And we can teach them the tools, and -- but

1 I just wanted to make that with the statement with
2 the veterans. I think it's important.

3 SENATOR AKSHAR: So Senator Sanders and
4 I have had some spirited and robust discussions
5 about regionalization, both on and off the floor of
6 the Senate.

7 And I think it's something, up to the
8 Senator's latest point, in terms of seeking some
9 clarification, or a clear path forward, right, from
10 those that have that knowledge.

11 I think that's something that we should, in
12 fact, look at. And if we have an opportunity there,
13 I think we should follow it.

14 You know, if in the North Country, in the MBE
15 world, 12 percent is the number, because that's what
16 we currently have certified, why, then, I am of the
17 opinion, that that's the number that should drive
18 the conversation.

19 And we should do a better job, if that number
20 is that low, right, of ensuring that we're doing
21 everything possible to raise that number and to get
22 more people certified.

23 I think it would put more of the onus back on
24 us to do a better job of ensuring.

25 If I happen to believe that 30 percent is

1 just an arbitrary number that the Governor has
2 picked, that's up for debate and discussion;
3 however, if that's truly the number that we want to
4 get to, why, then, the onus will be on us to do a
5 better job of getting more folks certified in that
6 particular space.

7 So, thank you both for your testimony.

8 SENATOR O'MARA: Thank you.

9 GREG LANCETTE: Thank you very much.

10 SENATOR AKSHAR: We'll invite Amy Criss from
11 84 Lumber to provide testimony, and then
12 Patrick Murnane.

13 Pat -- Patrick?

14 PATRICK MURNANE II: Yes?

15 SENATOR AKSHAR: Could we just have Amy
16 testify first, and then you?

17 I'm sorry, I didn't -- I didn't do a good job
18 of articulating.

19 Thank you.

20 Amy, welcome.

21 AMY CRISS: Thank you.

22 Good afternoon.

23 Senators, I am here again to testify.

24 Some of you may be tired of hearing my story,
25 but it's going to be the same one a little bit.

1 My name is Amy Criss. I'm the director of
2 women business enterprise and supplier diversity at
3 84 Lumber Company, which is a woman-owned business,
4 not here in New York.

5 SENATOR AKSHAR: Amy?

6 AMY CRISS: Yes?

7 SENATOR AKSHAR: If you want, you can
8 summarize this.

9 AMY CRISS: I am going to.

10 SENATOR AKSHAR: Okay.

11 AMY CRISS: I cut out a lot while I was
12 sitting there.

13 SENATOR AKSHAR: Thank you.

14 AMY CRISS: I've been with the company for
15 17 years, and my responsibilities are supplier
16 diversity and WBE development with 84.

17 We support Article 15-A.

18 And we, with Senator Ritchie, are showing a
19 pathway to bring MWBEs to be able to grow to their
20 full capacity in New York.

21 Thank you. I'll talk about that in a minute.

22 We have a bill, S8870-A and A1074-A, by
23 Senator Ritchie and Assemblywoman Peoples-Stokes.
24 It's bipartisan legislation.

25 It was passed by both the Senate and the

1 Assembly unanimously in June, and is awaiting going
2 to the Governor's desk.

3 We're a building-material supplier.

4 We have 23 stores in New York, most of them
5 upstate, two of them in Long Island. And I think we
6 have stores in all three of your districts.

7 Thank you.

8 And we did have a store in your district.

9 We were certified in the state of New York in
10 2010.

11 Then the personal net worth cap was put in
12 the state. And when we went to recertify, we were
13 declined because our personal net worth went over
14 the cap.

15 Just having one store cost us.

16 We own our own property. It cost us about
17 3 to 5 million dollars to have one store in the
18 state.

19 So the personal net worth cap is going to
20 kick us out no matter what, and we want to continue
21 to grow in New York.

22 We were certified in '10.

23 (Indiscernible) then we recertified.

24 They said no.

25 We applied for a waiver twice to get that

1 certification back, and we heard "no."

2 So this decertification had major impact on
3 84 Lumber Company's bottom line.

4 After losing our certification, we ended up
5 closing Watertown, New York, store, which we had had
6 in existence for 19 years, I believe.

7 It affect -- in fact, it was 10 minutes from
8 here, right on 12-F. And it affected over
9 10 families' income from our stores, and, what we
10 could research, at least 30 local suppliers,
11 vendors, such as truckers, local material suppliers,
12 hotels, restaurants, gas stations.

13 When you shut down a brick-and-mortar
14 location, it has a huge impact on the local
15 community.

16 No one wants to see loss of business,
17 especially in Upstate New York.

18 In fact, of the people speaking here today,
19 at least five of them are or were our customers.

20 Purcell, we did business with, so they were
21 not able to use us as a WBE anymore, which caused
22 them more difficulties.

23 Also, we are a huge employer of veterans.
24 They work very well in our atmosphere, very militant
25 atmosphere. And so that also lost employment

1 opportunities for a lot of the people up here that
2 were veterans.

3 We have a lot of contractors that call me,
4 still, every day, from 2015 to now: Did you get
5 your certification back? What's the story? You're
6 causing us a huge operational hardship.

7 There was a contractor in upstate. They were
8 building a barn, and we gave them a bid on that.

9 They thought we were certified.

10 And when they called me to find out where our
11 certification is, I had to inform them, We are no
12 longer certified.

13 They had to go with the next lowest bidder,
14 which was much more than our bid, and they also had
15 to go to the city to get that.

16 So it was a huge amount of money for
17 transportation, just to reach their goals.

18 That's one example.

19 I could give you many, many examples like
20 that, but that's one that we have.

21 We -- the legislation I spoke of is a way to
22 build capacity with everyone.

23 It says that first opportunity goes to small
24 diverse businesses. And if you can't reach your
25 goals, then you move on to a large diverse business

1 only if they're giving back to the community in
2 joint ventures, mentorship, training programs,
3 job-training programs, apprenticeship programs.

4 We have an apprenticeship program.

5 I think some of have you met one of our
6 apprentices, Jasmine.

7 We help underemployed and unemployable people
8 that have no experience in the construction trade.

9 If they want to have -- if they want to
10 learn, we bring them in.

11 We give them soft-skills training, OSHA
12 training.

13 We put them out there on the jobs, we pay
14 them. We put them out there with our contractors
15 for six months to learn the trades, to see what --
16 see if that's something they want to do.

17 We rotate them into our stores, to teach them
18 about inventory and material handling, or,
19 management training, to go -- move up through our
20 stores and be a manager.

21 At the end of the six months, they decide
22 what they want to do, and we will pay for it.

23 Do you want to go into a apprenticeship
24 program? We'll pay for you to go into an
25 apprenticeship program and become a carpenter.

1 Do you want to come into our store and do
2 material handling? Then that's what we'll do.

3 There's a labor shortage in this industry,
4 and we're doing everything we can to empower the
5 communities that we are in and build that employment
6 with them.

7 That's a part of the bill that came up that
8 would help in these.

9 Who's going to help a small diverse business
10 more than a large diverse business is?

11 If we've been through it, and we're large,
12 and we can give a hand up to these small diverse
13 businesses, that's the best way to move forward.

14 So if you're putting that on to the large
15 diverse business, that takes it out of anybody else
16 having to do it, and it puts the ownership on us, as
17 a large diverse business, to give a hand up to these
18 small diverse businesses; do training, do
19 apprenticeships, those things that we should be
20 doing to give back to our community.

21 I'm skipping through a lot of this, Senator.

22 I believe that's about it.

23 If you guys have questions for us.

24 But, we're here, we want to continue to grow
25 in New York.

1 We want to build more stores and employ more
2 people and help contractors.

3 We want to help our customers, like Purcell,
4 and some of these other ones, to reach our goals.

5 We have the capacity to do that.

6 We have an install program, where we can come
7 in and do that installed work.

8 And we can also bring our apprentice --
9 pre-apprenticeship program into that, and help the
10 people in your communities grow, and gain knowledge
11 and skills in an industry that they want to work in.

12 SENATOR AKSHAR: Senator Ritchie.

13 SENATOR RITCHIE: Just have one question.

14 Could you explain, when you were certified,
15 how the local construction companies would use your
16 business to qualify under MWBE?

17 AMY CRISS: They used us in many ways, mostly
18 for materials, they need their materials. Some of
19 them were customers of ours anyway.

20 We have the capacity to perform.

21 So they would use us for the materials they
22 needed for the job.

23 We also have an installed sales program,
24 where we install the type of materials that we
25 supply. So we can install roofing, exteriors,

1 windows, doors, trim, cabinetry, drywall; any of
2 that type of thing. So they can also use us in that
3 capacity if they needed a subcontractor to work with
4 them on those jobs.

5 We're pretty agile, and we have a lot of
6 things.

7 We have a sign shop.

8 If they needed signage, they can use us for
9 that.

10 Whatever helped them to get to their goals,
11 we were here for them.

12 SENATOR RITCHIE: Thank you.

13 SENATOR AKSHAR: Senator O'Mara.

14 SENATOR O'MARA: Yes.

15 Thank you for your testimony.

16 Just so I can get a better grasp on how these
17 qualification requirements fit for a company
18 structure such as 84 Lumber, with -- what I assume
19 is franchises that are -- no, they're not?

20 AMY CRISS: They're all owned -- we're own --
21 we're owned by Maggie Hardy Magerko, a woman. She
22 owns all the stores. She owns all the locations.
23 She owns all the inventory and everything in the
24 stores.

25 It's the only thing that got her through the

1 downturn, and that's when we became certified.

2 During the downturn we had a customer come to
3 us and say, We use you anyway, and you're
4 woman-owned. Why don't you get certification?

5 And so we did that for that customer, and
6 then continued to grow that base.

7 But, she owns everything, and she runs
8 everything, believe me.

9 A great lady.

10 And she empowers her people to really help
11 their communities.

12 She's a very wonderful lady, giving lady, and
13 she does a lot in her communities.

14 SENATOR O'MARA: How many 84 Lumber stores
15 are there?

16 AMY CRISS: 250.

17 SENATOR O'MARA: Wow.

18 AMY CRISS: And we'd love for there to be a
19 lot more, especially Upstate New York.

20 SENATOR O'MARA: And they're based in
21 Pennsylvania?

22 AMY CRISS: We are, we're headquartered in
23 Pennsylvania.

24 SENATOR O'MARA: How do the MWBE program
25 calculate this net worth aspect of it?

1 Is that the -- that's her personal net worth,
2 is my understanding; correct?

3 AMY CRISS: It's her personal net worth.

4 So as I understand it, you exclude your
5 personal residence, but you have to include all of
6 the different locations you have, which would take
7 her out of any limits that you would put on there as
8 personal net worth.

9 SENATOR O'MARA: Yeah.

10 I have personal experience with that, with a
11 woman-owned cabinetry business, I guess you would
12 say, office furnishings and interior build-outs, and
13 that type of thing, in Horseheads, New York.

14 Small; yet her net worth grew to over that,
15 and now she's disqualified from the program.

16 Very frustrating.

17 So I understand that --

18 AMY CRISS: It's cost us over -- what I could
19 calculate when we lost it, about \$15 million a year
20 it has cost 84 Lumber Company.

21 I have no idea what it's cost our vendors,
22 our suppliers.

23 You know, we use contractors to do all our
24 trucking. They all lost business. Those drivers
25 lost work.

1 SENATOR O'MARA: Did you -- if you said it,
2 and I'm not sure, how much business was lost by
3 84 Lumber in New York State because of the
4 disqualification?

5 AMY CRISS: Yeah, I believe it's -- it's
6 upwards -- when I was calculating it, it's
7 \$15 million, I believe, at this point.

8 We could probably gain 20-or-plus million
9 dollars worth of business if we were to get our
10 certification back.

11 It's been a huge problem.

12 We have four more stores on our watchlist
13 because of the loss of the business that we had.

14 Most of our stores do 3 to 5 million
15 Upstate New York.

16 So, you know, when you lose 15 to
17 20 million dollars worth of business, you have to
18 consider that.

19 And we don't want to see -- I mean, we
20 consider ourselves a part of these communities.
21 We don't want to see our families have any difficulty.

22 SENATOR O'MARA: Thank you.

23 SENATOR AKSHAR: Senator Little.

24 SENATOR LITTLE: Thank you.

25 And thank you, Amy.

1 I think your ideas that you put forth about
2 apprenticeship program, and doing some extra things,
3 in order to qualify are great ideas, and I thank you
4 for that.

5 But when it comes to this personal worth,
6 we've run into it with big excavators, big
7 contractors.

8 I have a woman who has a mechanical place and
9 does all kinds of business, but, she owns all the
10 buildings, she owns cranes, she owns this, because
11 she owns the whole company.

12 Her husband died, and she took it over and
13 ran with it.

14 So, somehow, we have to come up with some
15 ideas for calculating capital expenses.

16 You know, you can't just take everything
17 that's owned by the business, other than your
18 personal home, and say that this is your net worth.

19 So, maybe we could work together on something
20 like that.

21 AMY CRISS: I'd be happy to do that.

22 I truly believe that size shouldn't be a
23 barrier to inclusion.

24 If you're a woman, you're a woman -- you're a
25 woman-owned business, why should you cap how much

1 that woman-owned business can have or make or do?

2 If you're a minority, you're a minority-owned
3 business, you shouldn't cap their inclusion.

4 That's -- that's what they've been.

5 I would assume that that's what we want to
6 do, is grow businesses to their capacity, whatever
7 their capacity is.

8 Every business is a little different, and
9 wants to be at certain -- whatever capacity they can
10 grow to.

11 But I don't know why there should be a limit
12 put on to that, to their capacity.

13 SENATOR LITTLE: Well, I think some of that
14 is because we were trying to help women and minority
15 businesses get started.

16 I don't know that you want to see something
17 like a Home Depot become a minority- and women-owned
18 business and then they get all the business.

19 So --

20 AMY CRISS: Well, that's --

21 SENATOR LITTLE: -- we're not trying to make
22 it easy on everyone either, but, I think there's got
23 to be a happy medium here.

24 AMY CRISS: -- I think that's where that
25 legislation comes in, because large diverse

1 businesses would not get first opportunity. They
2 wouldn't even be looked at.

3 The small diverse businesses would get the
4 opportunity.

5 They don't even get looked at until after the
6 contractors or the -- they can't reach their goals.

7 Before they would go to apply for a waiver
8 through the waiver process that Christina talked
9 about, before they would go there, they would be
10 able to look at the large diverse businesses.

11 SENATOR LITTLE: Yeah, but we're talking
12 about certification. That's where I want to --
13 that's where we need to make some amendments --

14 AMY CRISS: Absolutely, to eliminate, because
15 if you own -- I mean, some businesses don't own.
16 They lease -- they lease their land, they don't have
17 any of that.

18 But, I find that a lot of women businesses
19 like to own their property, you know, and they
20 shouldn't be penalized.

21 SENATOR LITTLE: Well, the worst part is,
22 once they get certification, and then they get
23 denied, they have built up their business based upon
24 the minority- and women-owned business look that
25 they have of business.

1 They lose all that.

2 People lose their jobs, and it's a
3 disruption.

4 So, thank you.

5 It's something we need to look at.

6 AMY CRISS: Yeah, I would be happy to work
7 you, with whatever I can help you with, Betty.

8 SENATOR AKSHAR: You have a follow-up?

9 SENATOR O'MARA: I would just add, with
10 regards to the net worth thing, that I agree with
11 you, at least at this stage of the game.

12 I think that the more successful women and
13 minorities we show in an industry, is going to
14 encourage more women and minorities that they can
15 get into that industry and succeed in it, no matter
16 what it is.

17 But you've got to have leaders, and you've
18 got to have role models, so to speak, to show that
19 it can be done, and not that there's this glass
20 ceiling, or whatever terminology you want to use for
21 that.

22 So I appreciate your input on that.

23 AMY CRISS: Thank you.

24 SENATOR AKSHAR: I don't have any questions.

25 I just want to publicly thank you for your

1 tenacity.

2 You've been at the forefront of this, and
3 really brought a lot of great ideas to members of
4 the Senate, and, hopefully, some of them come to
5 fruition.

6 AMY CRISS: I thank you all very much for
7 listening to me over and over again, and anything
8 I can do to help.

9 Thank you.

10 SENATOR AKSHAR: Thank you, Amy.

11 Allow me to invite Patrick Murnane to provide
12 testimony now.

13 Patrick, sorry about the earlier confusion.

14 PATRICK MURNANE II: Hey, it's all right.

15 SENATOR AKSHAR: Welcome.

16 PATRICK MURNANE II: Thank you very much.

17 Good morning, Esteemed Senators.

18 First off, I'd like to start with a little
19 bit about our firm.

20 Murnane Building Contractors is a
21 second-generation construction company.

22 The company services the greater area of the
23 following markets: Albany, Syracuse, Utica,
24 Plattsburgh, and what I'm going to call the
25 "Messina-Potsdam-Canton market," because it's all

1 three little towns that make up what we call "an
2 area."

3 Our labor force is made up of union
4 employees. These carpenters, laborers, ironworkers,
5 and masons help us complete projects across Upstate
6 New York.

7 Our public-private breakdown is about
8 90-to-10 percent, public to private, and our motto
9 is "Building on a tradition of excellence." And we
10 try to bring this to all of our projects
11 irrespective of the state agency that we are working
12 with.

13 The state agencies we routinely work with are
14 DASNY, the State University Construction Fund, SUNY,
15 New York State DOT, New York State DEC, OGS, and
16 then all the various municipalities and local
17 schools.

18 I'd really like to take you through, what
19 I would like to talk about today would be, the
20 waiver process.

21 Tina from Purcell had mentioned that they do
22 not like to go through the waiver process. They try
23 to meet the goals.

24 We do too; however, since I've been at
25 Murnane Building Contractors since 2015, we have not

1 had a project meet the goals.

2 That's across my office, which covers
3 Clinton County, Essex County, Warren County,
4 St. Lawrence County, Franklin County, North Elba,
5 which is still in Essex County, I think.

6 Anyways.

7 So contractors on bid day, as has been
8 discussed, it's extremely stressful.

9 You know, it's like that feeling that you get
10 when you are on a roller-coaster. You're coming to
11 the top of it and you're, like, oh, my; oh, my; oh,
12 my, and you're trying to make sure that you're
13 covering everything.

14 You make sure that you've got everything
15 covered from, you know, every screw that's going to
16 go into the drywall, all the concrete, all the
17 rebar. And when these contracts are upwards of
18 15 million, that's a lot.

19 As low bidders for the State of New York, we
20 have to be as precise and concise as possible in
21 order to get work to keep all of our employees
22 working.

23 So, in the lucky event that we're a low
24 bidder, we rejoice for about a half second before we
25 then focus on the award letter that we just

1 received, which says, you know: Please provide your
2 CCA-2s, your statement of ongoing jobs, and then
3 the last bullet point is, your MWBE plan.

4 At that point, you've either estimated the
5 job and you have all the quotes that were received
6 on bid day, or you go into the office of the
7 estimator and get those quotes.

8 You then input that data into a spreadsheet,
9 with a nice pie chart, so that you can explain to
10 the owner:

11 This is how much we're self-performing;

12 This is how much of the WBEs we have;

13 This is how much of the MBEs we have;

14 This is how much of the service-disabled
15 veterans we have;

16 And then this part of the pie is parts of the
17 scope that cannot be executed by MWBEs that we know
18 of, or any contractors in New York State sometimes.

19 Sometimes there's specialty items that we
20 have that nobody in the state can perform.

21 So we then compile all this information and
22 we see where those numbers fall.

23 And as I just mentioned, we have never
24 actually had a project meet the goals at 15 and 15.

25 So then we put all the information that we

1 have: All of our solicitations to contractors, both
2 MWBE and non-MWBE; quotes received from low MWBEs,
3 and quotes received from non-low MWBEs; and the
4 quote from the company that beat them; and put it
5 all into a package, send it off to the state agency.

6 Now, if your plan were to get approved,
7 likely a week after you submit this initial package,
8 you would get a request to provide bonds, insurance,
9 and execute a contract.

10 The plan is never approved because the goals
11 are not met. And they do not -- I have never had a
12 state agency accept our good-faith effort on the
13 first try.

14 So once the plan is not approved, which means
15 that you didn't meet the goals, the contractor
16 receives a formal rejection of the plan. It's not
17 from ESD, but the actual agency itself that is
18 letting the project. And it's mostly a statement
19 that says, you know:

20 Dear Mr. Murnane:

21 Upon review of your plan and waiver request,
22 we note that you did not meet the project goals.
23 Please provide additional evidence of your
24 good-faith effort.

25 So, at that point, I make the call

1 immediately to the person who reviewed the plan, and
2 said, Okay, what more do you need, because we want
3 to comply with the good-faith effort? We want to do
4 everything we can to keep this moving forward as
5 fast as possible.

6 And then they'll say, you know, We'd like
7 evidence of your solicitations. We would like
8 copies of the quotes.

9 And if we sent out e-mail notifications, they
10 say, Well, you know what? E-mails aren't
11 necessarily good enough. We want evidences of your
12 phone calls that were made to your list of 200 to
13 300 contractors that you may have solicited, a
14 breakdown of the project values and scopes, and then
15 a letter explaining why the goals were (sic) met.

16 Typically, at that point, I point out to them
17 that this was already submitted with the original
18 package, as requested, within three days after
19 notice of award.

20 And they'll tell you: You know what? It's
21 not good enough.

22 So, since 2015, I have -- I've been a part of
23 this process on seven projects.

24 I have the list here.

25 We met the WBE goal on three of them. We

1 have never met the MBE goal.

2 One of the interesting things, on Project 6
3 on my list, was a DASNY project for Whiteface Hall,
4 SUNY Plattsburg, Plattsburg, New York.

5 They reduced the goals, from 8 percent, to
6 7 percent.

7 We were notified that we were awarded the
8 project in January. And, from January until April,
9 we spent time going over and over that initial plan
10 submission, and making more phone calls, only to
11 have no more participation, or, if it was, it was
12 about a half a percent.

13 So it delayed the project award by
14 four months, and it prevented us from getting
15 started on the important things, like, scope
16 breakdown, scope reviews, making sure that we had
17 all the submittals in place to start the
18 construction. And it can really be quite a hassle.

19 So that's some of the hardship that we deal
20 with with this waiver submission.

21 And of these seven projects that I have on my
22 list, that we have not met the goals on, the waiver
23 always gets approved; however, it's always months,
24 months at a time. Always one month or greater.

25 I think one month is the minimum -- or,

1 actually, I'm sorry.

2 I believe it's one month maximum that
3 New York State has to review these waiver requests.
4 And after that, they must approve it, or project it
5 and provide reasoning.

6 And some of them are going longer because
7 they don't submit your review for a request for a
8 waiver right away.

9 So companies like DEC, DASNY, the ones that
10 I mentioned earlier, you'll submit their plans, say,
11 Please submit this to ESD, who I believe reviews the
12 waivers.

13 But they will not.

14 They will review it in-house, and then they
15 will kind of say, Okay, you know, you did not do a
16 good enough job with your good-faith efforts.

17 And we have lists, we have the Executive
18 Law 15-A, so we think that we have provided a
19 good-faith effort.

20 And what I would like to share with you are
21 copies of two approved plans, one by SUNY. And then
22 one that was not approved by DOT.

23 This is my DOT plan. It's got a binder clip
24 around it. It's one copy.

25 I have 10 copies of one approved by SUNY that

1 is 5 pages.

2 So there's a wide range of discrepancy across
3 the various the state agencies of what is an
4 "approved good-faith effort," and what isn't.

5 And I will pass these up to you after I'm
6 done speaking.

7 So it just makes it very hard for
8 construction contractors to do business with these
9 agencies, not knowing what is required.

10 The next thing I just wanted to touch on
11 briefly was cost.

12 I heard a lot of discussion about, you know,
13 how does this impact the bottom line for the
14 taxpayers of the state of New York?

15 I'll give you one example.

16 For a project -- bless you.

17 For projects in Plattsburg, we have -- we are
18 union employees, we do State work. It's prevailing
19 wage rate.

20 So we have a lower rate than the surrounding
21 areas.

22 St. Lawrence County has a higher wage rate.
23 Albany County has a higher wage rate.

24 On a recent project for the New York State
25 DOT, we had, I think, three "steel erection" numbers

1 from WBE firms from Albany. They were all around
2 \$120,000.

3 We ended up self-performing it because we
4 carried our number for self-performing at \$75,000.

5 So that was -- if you're looking for
6 percentages, that's around 35 percent higher to go
7 to a WBE out of Albany, for the very reason that
8 they're not going to ask their employees to travel
9 from Albany to get paid less.

10 They're going to pay them the same rate that
11 they would pay them in Albany, they're going to pay
12 a per diem.

13 So all of these added costs are incorporated
14 when they're pricing out a job out of their locale.

15 And what we have in Plattsburg, Franklin,
16 St. Lawrence, all these counties in northern
17 New York, is a lack of capacity to meet these goals.

18 So like Priscilla (sic) had mentioned, when
19 you're going out to get these companies from
20 Buffalo, Utica, Syracuse, to travel three hours to
21 Watertown and Plattsburg, it does have an impact on
22 cost for the taxpayers.

23 So I guess I'll close it there.

24 I had one more comment, but I think that
25 there's a good dialogue going on here, and I don't

1 want to extend the session any longer than it needs
2 to go on.

3 So I guess my two suggestions to cap this
4 would be:

5 Make sure that there's some conformity across
6 state agencies for what a "good-faith effort" is.

7 And, to make sure that the elements of cost
8 are looked at when a WBE is submitting a bid,
9 because these agencies will say, "Hey, why aren't
10 you using this WBE steel erector out of Albany?"
11 even though I have given them the information that,
12 you know, it's saving the State money.

13 Didn't carry them. It was more
14 cost-effective to do it ourselves at a cheaper
15 price, and, ultimately, the taxpayer benefits.

16 Thank you very much, and I welcome questions.

17 SENATOR AKSHAR: Senator Ritchie.

18 SENATOR RITCHIE: Yes.

19 The first question is just to follow up on
20 the conformity issues.

21 So there are certain state agencies that the
22 waiver process is somewhat streamlined, and that you
23 can rely on what the outcome is going to be?

24 PATRICK MURNANE II: What state agency is
25 that?

1 I'm not sure.

2 No.

3 SENATOR RITCHIE: Okay. Well, I -- no,
4 I thought you said that there was a difference
5 between the two. One has --

6 PATRICK MURNANE II: No, there is not.

7 They always -- every agency has always asked,
8 If you do not meet the goal, please try harder.

9 They love expressions in the construction
10 industry.

11 I hear "Give it the old college try" a lot.

12 I hear "Buckle down and bear up and do it."

13 And, you know, sometimes we can squeeze out a
14 little bit more, you know, half a percent to a
15 percent.

16 But we never actually meet the goals with
17 these second and third efforts that delay the
18 prosecution of the work.

19 SENATOR RITCHIE: So when you're talking
20 about "conformity," there is still a difference
21 between state agencies.

22 I'm assuming, are they all bad?

23 Some are better than --

24 PATRICK MURNANE II: Some are better than
25 others.

1 SUNY, I think, has been doing a great job
2 working with contractors, and I think they've been
3 modifying goals per regions.

4 They've been taking a look at, okay, what is
5 the capacity?

6 Because -- I have a chart that I submitted to
7 DOT, where I went through the database from ESD, you
8 know, and highlighted: Okay, this is a compatible
9 scope. Out of the 300 contractors that you have
10 listed, 40 work within the scopes of this project,
11 and only 20 would even think about traveling here.

12 So it --

13 SENATOR RITCHIE: Just looking at, if there
14 is an agency, and if SUNY is the one that is
15 actually making the process a little easier, it
16 would be good to see what the difference is if we're
17 trying to make the program better.

18 PATRICK MURNANE II: Yes, SUNY would be the
19 one that I believe is working on it. And DASNY is
20 too.

21 As you see, as I mentioned, they did lower
22 their goals on a 2018 job that was bid for Whiteface
23 Hall, to 8 percent for MBE and 7 percent for WBEs.

24 We met the WBE goal, but we did not achieve
25 any MBE participation.

1 SENATOR RITCHIE: Okay.

2 And I guess my last is just a comment, that,
3 given how long this process takes you, you know,
4 months out, with delaying the actual project, that
5 if you could have found those businesses, it would
6 have been a lot less work and a lot less money to
7 just hire those companies versus trying to skirt the
8 rules and drag it out.

9 So I guess what I'm trying to say is, that if
10 we're trying to make this better, capacity is the
11 issue. And, you know, everybody wants to make sure
12 that we're following the rules and everybody's
13 trying.

14 But it's kind of hard to believe that you
15 wouldn't be trying to do that if you were causing
16 the company to delay a project for six months.

17 It just doesn't make sense.

18 You would have just hired those companies in
19 order to conform.

20 PATRICK MURNANE II: Right. And we love
21 capacity.

22 SENATOR RITCHIE: So it's a real problem.

23 PATRICK MURNANE II: It is a problem.

24 And we love capacity.

25 In the construction industry we're low

1 bidders.

2 We welcome more capacity in the subtrades.

3 We welcome competition from all of the other
4 firms in the area because it gives us a barometer of
5 where we are with our rates, and it allows us to,
6 you know, fine-tune our pencils and keep working.

7 SENATOR RITCHIE: Thank you.

8 PATRICK MURNANE II: Thank you.

9 SENATOR AKSHAR: Senator Little.

10 SENATOR LITTLE: Thank you.

11 And thank you, Patrick.

12 Murnane is located, headquarters, in
13 Plattsburgh.

14 Two things:

15 This program, which I supported, and voted
16 for, was a goal; a statewide goal.

17 And it got changed, so that it's a goal for
18 each and every project, and it's not even a goal
19 anymore. It's a requirement.

20 And no place in the legislation did it say
21 that.

22 And you talked about getting a requirement to
23 have 15 percent minority, 15 percent women.

24 No place in the legislation did it ever state
25 that.

1 We never voted for that.

2 You could meet the women because you had the
3 capacity for a women-owned business.

4 You could not meet the minority portion.

5 We had one, the Wild Center in Tupper Lake.
6 They gave them 13 percent women-owned business;
7 12 percent -- at the time it was 25 requirement --
8 minority-owned women -- business. They all had to
9 come from Syracuse.

10 No place did it ever say that.

11 And we have got to get to the root of some of
12 these regulations that have been added, I think
13 mostly by staff, and, you know, wanting to make this
14 program work, and it wasn't working.

15 So, let's just up the ante here.

16 But I know it's cost you a lot of money, and
17 I know you've worked hard to try to meet the goals,
18 and you do a lot of good work.

19 And as you said, and I never knew this, that
20 when a company comes from Albany, you have to pay
21 the prevailing wage in Albany, the capital district.

22 PATRICK MURNANE II: Well, they don't have
23 to.

24 SENATOR LITTLE: But --

25 PATRICK MURNANE II: They don't have to.

1 But if you're going to ask somebody to go
2 work out of district --

3 SENATOR LITTLE: They're not going come
4 otherwise.

5 Right.

6 I didn't know that.

7 So that's an added cost.

8 PATRICK MURNANE II: Uh-huh.

9 SENATOR LITTLE: But thank you for being
10 here, and you give some really good specific
11 examples.

12 SENATOR AKSHAR: Senator O'Mara.

13 SENATOR O'MARA: Thank you for being here.

14 In your process in these requests for
15 waivers, has any state agency actually suggested a
16 particular MWBE, saying: You haven't done your
17 full-faith effort. Have you checked with this
18 particular company?

19 PATRICK MURNANE II: Yes, they have.

20 And oftentimes we've already checked with
21 them, and they just either missed some of the list.

22 We'll, also, a lot of times call them, and
23 we'll get no callback.

24 I've never had a state agency -- actually,
25 I'm sorry.

1 There was one time I got an extra concrete
2 price that was on budget from a WBE suggested by
3 DASNY out of Albany, to come up and do sidewalks on
4 a job.

5 So, there was one.

6 But, every time they say, Hey, have you
7 thought about this company? Have you thought about
8 this company?

9 And we always ask them, but we never get any
10 response.

11 SENATOR O'MARA: If that contractor was going
12 to come up and do sidewalks, how far of a commute
13 would that be from Albany?

14 PATRICK MURNANE II: Two and a half hours.

15 SENATOR O'MARA: And that would be bringing
16 their equipment -- concrete trucks, the forms,
17 everything else -- driving that distance to do that
18 job?

19 PATRICK MURNANE II: That is correct.

20 SENATOR O'MARA: Now, each -- according to
21 the law that we passed, each contract being issued
22 is supposed to have its own particular goal.

23 Have you seen any difference, from one
24 contract to another, as far as how they've looked at
25 what the goal should be on that particular project?

1 PATRICK MURNANE II: Of the seven projects
2 that I have on my list, only one had less than a
3 30 percent goal.

4 They did vary.

5 Sometimes it was 15/15, sometimes it was
6 13/17, sometimes was 18/12; but they were always
7 30 percent.

8 Up until this -- up until 20 -- 2018, we have
9 started to see, in Plattsburgh, modifications by
10 DASNY and SUNY to these goals.

11 So I -- it's a welcomed sight.

12 But, still, the waiver process is: You're
13 not doing a good enough job. We dropped these goals
14 for you. How come you didn't meet the dropped
15 goals?

16 Because the problem still exists, there's a
17 lack of capacity. There's a lack of qualified
18 WMBEs (sic) who submitted bids to do this work.

19 SENATOR O'MARA: Thank you.

20 SENATOR AKSHAR: Senator Sanders.

21 SENATOR SANDERS: Thank you.

22 I'm not familiar with your company, so you'll
23 forgive if I ask you a few questions.

24 Just -- you have 500 employees, I believe --
25 around 500 employees?

1 PATRICK MURNANE II: 350, I would say.

2 SENATOR SANDERS: Okay.

3 What percentage of that is women?

4 PATRICK MURNANE II: In the labor force, it
5 would probably be about 6 percent.

6 I would say, on the office staff, it's a
7 little bit higher. I would say it's around
8 30 percent.

9 SENATOR SANDERS: I'll be kind and not ask
10 about people of color.

11 Well, I'll -- what percentage are people of
12 color? Less than 6 percent?

13 PATRICK MURNANE II: It depends.

14 Albany, it's much higher.

15 Plattsburgh, the carpenters, laborers, and
16 masons are predominantly White.

17 Our ironworkers are all Native American, for
18 the most part. About 60/40, Native
19 American-to-White ironworkers.

20 Albany, our labor force is a little bit more
21 African-American, a little bit more Latino.

22 Syracuse and Utica, less so, but more
23 diversity than Plattsburgh.

24 Plattsburgh is, by far, the least diverse.

25 SENATOR SANDERS: So you're big enough to

1 compete with some of the big guys.

2 Every industry has a top four.

3 How many times have you been beaten out by
4 the big guys?

5 PATRICK MURNANE II: That's tough to say.

6 SENATOR SANDERS: A guesstimate.

7 PATRICK MURNANE II: When you mention "the
8 big guys," I think of the Turner constructions, the
9 Skanskas, the Suffolk, the Samants (ph.).

10 SENATOR SANDERS: The big guys that you
11 compete against.

12 PATRICK MURNANE II: Well, the big guys that
13 we compete against --

14 SENATOR SANDERS: You don't have to name
15 them.

16 PATRICK MURNANE II: -- okay.

17 30 percent, we win our bids, I would say.

18 We -- one in three jobs we're lucky to win.

19 It's a competitive market up here.

20 There's Betty and Crane (sic), Northland,
21 Purcell, these companies across Upstate New York,
22 that I wouldn't characterize any of them as "big
23 guys."

24 I think that they're all pretty small and
25 tight and competitive.

1 The Pikes, all of the companies in Syracuse,
2 that you'll see seven companies on a bid. It's not
3 like they're giants in Upstate New York.

4 Everybody is struggling for a piece of the
5 pie.

6 SENATOR SANDERS: So there are no giants, by
7 and large.

8 Just trying to figure the economy.

9 PATRICK MURNANE II: No, the only giants that
10 we actually see are actually brought on as
11 construction managers for a lot of these Wicks Law
12 projects, that have to -- because I believe
13 Wicks Law requires a construction manager to
14 coordinate the trades.

15 So, sometimes local schools with big
16 \$15 million renovation jobs will bring on a
17 Turner Construction Company, who is one of the
18 top ten in the United States, to manage the process.
19 But they will still hire companies, like Murnane, to
20 try to do the concrete, or -- et cetera.

21 SENATOR SANDERS: My last point, you had
22 shown -- I think Senator Ritchie drew attention, you
23 had shown two different contracts, or two
24 different --

25 PATRICK MURNANE II: Yes.

1 SENATOR SANDERS: -- contract ways of dealing
2 with addressing it.

3 Were they for the same amount or for
4 different amounts?

5 PATRICK MURNANE II: This one was 6.4.
6 This one was 4 million.

7 SENATOR SANDERS: Roughly the same.

8 I mean, you know, God willing, you won both.

9 PATRICK MURNANE II: Yes, we did.

10 SENATOR SANDERS: Now you're talking.

11 I'm through.

12 Thank you.

13 SENATOR AKSHAR: Okay.

14 Thank you very much, Patrick.

15 PATRICK MURNANE II: Thank you.

16 SENATOR SANDERS: Thank you, sir.

17 SENATOR AKSHAR: Okay.

18 I'm going to invite Andy Breuer, Casey Burns,
19 and Kim, is it, Bovee? Bovee (different
20 pronunciation)?

21 Bovee.

22 We're going to get you another chair, right
23 now.

24 Danny, wherever you are, Danny Fitzpatrick,
25 you're on deck, my brother. Okay?

1 Welcome.

2 Andy, go ahead.

3 ANDY BREUER: Thank you again for posting
4 this event, Senators, and for those of you
5 participating in the panel.

6 Andy Breuer, Hueber-Breuer Construction.

7 We are a Syracuse-based construction manager
8 and general contractor.

9 And for the sake of brevity, and not being
10 redundant with some of the good comments that have
11 already, I think you can largely draw a lot of
12 parallels in terms of size, bandwidths of geography
13 and projects, to how Hueber-Breuer operates, and how
14 Murnane Construction, and Patrick who just spoke
15 before me.

16 Geography is a little different.

17 They're northeast New York-based, where we
18 are central New York-based, but, I could largely
19 paint a picture very much in parallel with
20 everything that Patrick just said.

21 But for the sake of brevity, I'll just try to
22 hit on some new points.

23 First of all, Mike Elmendorf with AGC --

24 So the AGC of New York State, if you're not
25 familiar, is our trade organization. So a number of

1 us here today, certainly Purcell, ourselves,
2 Murnane, many others, we -- this is the trade
3 organization we rely on.

4 -- and those of you who participated in
5 the Albany summit will, hopefully, recall
6 Mike Elmendorf, our president's, testimony here.

7 This document, and the appendices he included
8 with it, is very all-encompassing.

9 A lot of the commentary that's already been
10 discussed by Mr. Carroll, and, Senator Sanders, you
11 spoke on the Croson case law, the research and the
12 data that has gone into this, while I'll admit it is
13 not a "Harry Potter" novel, you might need a strong
14 cup of coffee to get through it, but, I would
15 encourage you to do so.

16 There's tremendous information in this
17 document. It, very effectively, establishes not
18 only the position, but, really, the sentiment and
19 the emotion behind this challenge for organizations
20 like ours.

21 But I really think that the history and the
22 constitutionality of it is very well reflected in
23 this document.

24 Senator Little, you were very right to say
25 this has gone well beyond a goal.

1 This is now a mandate, and I'd even say an
2 executive edict.

3 It is -- you know, pushing back on that edict
4 is where we need the help, respecting the law,
5 respecting how this evolved from the 2010 disparity
6 study.

7 And I'll call the "23 percent" requirement
8 that, essentially, was established for that
9 disparate study, and acknowledging the lack of
10 effectiveness of the 2016 revisit to the disparity
11 study.

12 Those are all very important points to how we
13 consider how we got here today.

14 We spoke -- folks have touched on
15 regionality.

16 I strongly encourage you to think about the
17 regionality, not just because of the autonomy it can
18 give to agencies, and the authority it can give, but
19 to the accessibility.

20 I think it would be very helpful to somebody,
21 like a Purcell, to be able to come and meet with
22 someone in this office building, and speak to the
23 challenges of a specific goal.

24 So I hope you'll, you know, give credence to
25 those local municipalities, local agencies, that are

1 going to know best what the demographics are that
2 make up their regions.

3 I think, in terms of qualification of
4 companies, the certification criteria, the
5 application, I want to touch on the fact that it's
6 very hard for us in a mentor role to work with
7 entrepreneurs within our ranks.

8 And Greg and I touched on that.

9 You find an ambitious entrepreneurial person
10 in your workforce, a tradesman, and you want to
11 support that person.

12 They're worried about keeping the lights on,
13 keeping food on the table.

14 They are not necessarily worried about
15 contract management, about continuing education,
16 about bonding and liability insurance.

17 These are the things that folks in the mentor
18 role, like ourselves, we can do to encourage those
19 folks.

20 But right now, at the certification level,
21 it's almost a stain for me to say: I have supported
22 a person of color or a woman business to get
23 started.

24 I have kept that person in that 24-month
25 window of positive cash flow by keeping them busy.

1 If they can only show that they've been busy
2 working for one construction manager, one general
3 contractor, they will not be certified. They'll be
4 roundly rejected.

5 So, in those cases, I think it actually
6 discourages competition, and the growth of a new
7 business in a state where, frankly, the barriers of
8 entry, labor law.

9 We don't have to go into 240, 241, but,
10 that's a whole other topic.

11 So, ultimately, I think that, when you get
12 into Elmendorf's testimony letter here, the white
13 paper, and you look at how the waivers have
14 increased since the 2014 edict, it clearly shows how
15 unattainable these goals are, particularly in this
16 region.

17 So I urge you to consider it and to help
18 strengthen this position.

19 Thank you again.

20 SENATOR AKSHAR: Thank you, Andy.

21 Kim.

22 KIM BOVEE: I would like to start out by
23 thanking you for letting me offer this testimony
24 today.

25 My name is Kim Bovee, and I am the president

1 of J&R Electric, a small electrical contractor that
2 serves a large part of northern New York.

3 On the average, we extend up to a 100-mile
4 radius from our office which is in Pierrepont Manor,
5 New York, the southernmost part of Jefferson County.

6 We are a signatory contractor with IBEW
7 locals in Watertown, Syracuse, Binghamton, and
8 Geneva.

9 We employ anywhere from 10 to 20 employees,
10 depending on our workload, who are highly-trained
11 electricians.

12 My father-in-law and husband started the
13 business in the early 1990s, and I became active in
14 the 2000s learning everything I possibly could.

15 The three of us ran the business together for
16 many years. And with my commitment and hard work,
17 I became the president and majority owner in 2008.

18 We considered applying for my WBE
19 certification at that point, with hopes that we
20 could capture some additional work in the future, as
21 the WBE requirements were starting to come into the
22 picture.

23 We decided to wait a few years before we
24 applied for our WBE certification so there wouldn't
25 be any doubt that I was capable to run our company

1 the way it had been for the past 20 years.

2 In 2014 I decided it was time to start the
3 WBE application process.

4 Unfortunately, with the overwhelming amount
5 of time required and time restraints for the
6 process, I gave up.

7 It was extremely complicated process and
8 time-consuming, and I couldn't run a business and do
9 that at the same time.

10 My experience with the State's WBE
11 application process was not a positive one, and this
12 is kind of where my story begins.

13 After reviewing our financials with our
14 accountant in 2015, we were looking back at some
15 projects that we would have typically done, as we do
16 a lot of specialty electrical work. And after a few
17 phone calls, realized we had lost them to
18 contractors downstate, approximately, 500,000 to
19 date.

20 We discussed in depth with our accountant the
21 impact the WBE certification could have on the
22 future of our company, and decided, with his help,
23 that we would tackle the application process again.

24 Our accountant also recommended we submit a
25 separate application for our JRE Leasing, as the two

1 companies are tied together and could also lead to
2 potential work in the future.

3 We finalized and submitted both applications
4 in March of 2016, with no response after numerous
5 attempts to contact the agency to see the status of
6 our application.

7 We received confirmation in December of 2016
8 that they were both under review.

9 With much regret, on February 3rd of '17, we
10 received our denial letters in the mail.

11 At first review, the reasons for denial
12 looked accurate, but after a week or so, we decided
13 to talk to our attorney.

14 He and our accountant recommended asking for
15 appeal, so we did.

16 After a month with no response, and a call
17 from our attorney into the agency, we had a
18 phone-call appeal.

19 We explained in depth, as much as we could
20 over the phone, exactly what I have put in this
21 letter.

22 My husband and I don't have separate bank
23 accounts.

24 Why does it matter if I make less money than
25 he? We file jointly on our income tax returns.

1 How does it makes sense that I don't have the
2 managerial experience to run the business, when I've
3 been doing it for 10-plus years?

4 I'm not an electrician, nor do I plan to be,
5 but I certainly assist in the daily activities with
6 our 10 to 20 electricians that work for us.

7 I'm active in purchasing materials.

8 I am active in "WIN," which is Women in NECA
9 (the National Electrical Contractors Association).

10 I've attended numerous conferences and
11 seminars regarding our industry.

12 Who is making these determinations and
13 setting criteria to determine who can be president
14 of my company, be the majority shareholder,
15 determine what that individual should earn or
16 possess in knowledge?

17 How is it fair to the small companies like
18 ours, that have worked hard for many years to
19 establish a business, create great partnerships with
20 clients, and slowly lose work to WBEs due to the
21 State's requirements in this regard because I cannot
22 get certified.

23 We are often a subcontractor to a
24 subcontractor on public projects.

25 I question the competitive bid process that

1 has been in place at our level for years.

2 Larger companies have the leverage to pick
3 and choose sub of subs, regardless of cost, to help
4 meet the MWBE requirements.

5 I'm not sure that's the intent of this
6 program.

7 If this application process is so difficult
8 that you are denying certification to legitimate
9 woman-owned and -operated businesses, what business
10 do you expect will be available to fulfill the
11 current W -- MWBE participation requirements being
12 imposed statewide?

13 If there are limitations on net worth, which
14 disqualifies companies once they become too
15 successful, how will these goals ever be addressed?

16 If, and when, I obtain by WBE certification,
17 am I to live in fear of having to revoke once
18 I become too successful?

19 We have two children, Chelsea and Tucker, who
20 have started working in the business, and plan on
21 making it their future professions when they finish
22 their education.

23 I'm willing to bet they will work as hard as
24 we have to see the company grow.

25 I just hope that the State doesn't keep

1 upping the mandates to put a hard-working
2 three-generation family business under.

3 I have to, and will, wait another year to
4 start the application process again.

5 I believe in this program and I want to
6 participate in it.

7 However, the issues I have previously
8 mentioned need to be addressed; otherwise, you will
9 fail to enlarge the pool of legitimate WBE
10 businesses to address the volume of the construction
11 work being done in this state.

12 Thank you for your time.

13 SENATOR AKSHAR: Kim, thank you.

14 Casey.

15 EDWARD CASEY BURNS: Yes, thank you.

16 My name is Edward Casey Burns. I'm the
17 president of Tuscarora Construction Company. We're
18 located in Pulaski, New York.

19 We are a member of the AGC, as many are here.

20 I think we're the only heavy highway, because
21 I'm a heavy highway contractor.

22 And I'm going to cut through much of what
23 I wanted to talk about because it's already been
24 talked about, and, apparently, in other hearings
25 too. So I'm going to try to make this simple.

1 I think what I'd like to do is, is -- we have
2 a -- we obviously have a problem with ever-rising
3 requirements to hire MWBE firms, and the
4 requirements about pace, the capacity, and I think
5 that's been clear to everybody.

6 And we've talked a lot, regionally, about
7 because of demographic makeups and things, where our
8 minority firms are coming from.

9 So -- and we focused on that a little bit.

10 I also want to make a point, while I can, as
11 a heavy highway contractor, that, although all
12 businesses of all kinds have certain commonality,
13 construction has its own unique features, which
14 I think we understand.

15 Within construction there's also different
16 types of firms.

17 And most of the people, you know, who have
18 been here, have been either subcontractors or
19 building contractors.

20 And, the vertical construction is different
21 than the horizontal construction in a way, that the
22 makeup of the contracts are different.

23 Buildings have more pieces and parts. They
24 possibly have more opportunities for subcontracting.

25 As a highway contractor --

1 We used to do a lot of highway, we don't
2 anymore.

3 -- we do bridges, are -- which have more
4 pieces and parts, there are less opportunity along
5 the way to subcontract work.

6 In our bridge projects, and we do bridge
7 projects -- we work more in central and northern
8 New York.

9 We currently have two bridges in process.
10 We're doing one for St. Lawrence County. We're
11 doing one for Jefferson County.

12 These are sponsored by the DOT. These are
13 locally-administered projects. They're federally-
14 and state-funded, so we're under all the
15 requirements.

16 But within that process, our particular jobs,
17 the goals were set low, and, apparently, these
18 projects were in line prior to the goals being
19 raised recently.

20 We have relatively low goals. They were
21 7 percent each, combined.

22 We made those -- we made those easily, but we
23 made those by using the same -- essentially, the
24 same subcontractors on both jobs: traffic control
25 signs, bridge and guardrail, reinforcing steel

1 installation.

2 Those same three contractors, subcontractors,
3 we used on both jobs.

4 On the other job, which happened to be
5 Jefferson County, there is a different item for
6 some -- of a large amount of waterproofing. It's a
7 specialty product.

8 We have one woman's business coming out of
9 the Hudson Valley area. That's what she does, she
10 travels to do it. They're happy to do it.

11 And there's some line striping.

12 But there's relatively small -- these are
13 small subcontracting opportunities.

14 So when we're setting up goals, I think it's
15 important to look at the nature of each project, and
16 I'll get back to that in a minute.

17 I guess, looking forward, I'm going to
18 just -- one of the reasons you're here, I think, is
19 to hear, not only what our problems are, but maybe
20 some ideas to move past our problems.

21 And I've kind of broken it down in my head in
22 a couple of different ways.

23 One is, what's our immediate future going to
24 be for this program?

25 I think, right now, what it appears that

1 we're dealing with, is the lack of available MWBE
2 firms in numbers and in capacity, and that's
3 especially true in central and northern New York.

4 So I have a couple -- just a couple thoughts,
5 if you would, please.

6 In the absence of a comprehensive, accurate
7 needs study, I think -- and I know there's executive
8 issues here, but I think we need to do away with
9 arbitrary statewide utilization requirements. That
10 the goal should be set on specific projects based
11 upon the actual work requirements and the
12 opportunities generated by these projects, because
13 that's really what we're talking about here. Right?

14 The public money, the public funds, are
15 generating opportunities for all of us, right, all
16 of us in our business.

17 And we do want to get that distributed
18 properly, but it's not the same everywhere, and it's
19 not the same for each project.

20 And I would suggest that the agencies that
21 are putting these projects out, right, that are
22 doing the design, setting up the lettings, who
23 understand their work.

24 Whether it be the DOT, they understand
25 highway work;

1 Whether it be the OGS, or the dormitory
2 authority, they understand their projects, they
3 understand their contractors.

4 They have history.

5 They have lists of people they know it works
6 and doesn't work.

7 That those -- at the very least, the program
8 needs to use their input to establish the goals, and
9 it could be established as easily in the design
10 process as finding out whether you want to have a
11 steel beam or a concrete beam.

12 Right? It's just part of the process.

13 I think it could work.

14 And I -- but I -- I mean, I believe it needs
15 to work.

16 And I believe that's, essentially, what
17 happened when the program was first set up many
18 years ago, that we -- they try -- you know, there
19 was an attempt to try to figure out what the
20 availability was.

21 And we've pushed beyond that for reasons
22 other than the physical construction work, which
23 I think goes counter to what's going to be
24 successful.

25 The other thing that I made note in listening

1 to people talk here, is I think we need to do away
2 with penalizing the agencies and the contractors who
3 fail to meet arbitrary goals.

4 Pulling back agency funding, assessing
5 liquidated damages against contractors, and
6 withholding payments for work that's already
7 completed does nothing to increase available women
8 and minority businesses.

9 It just doesn't.

10 It does put pressure on general contractors
11 to look harder, push harder, but, in the long run,
12 it's counterproductive to penalize the people you're
13 relying on to make this program work.

14 I would suggest, and this is more of a
15 regulatory, or maybe an agency, idea:

16 You know, we've been talking here, and we've
17 been combining in our minds, and we do, you know,
18 even in some of the projects, we call -- you know,
19 as a WBE, we combine the women and minority goals
20 into one, and we talk about one goal, and at least
21 in the highway end.

22 In the federally-funded projects, that's
23 allowed, and that's encouraged, by the federal
24 people putting the federal money in.

25 With state -- simply state-funded-only jobs,

1 we are required to keep those separate. And
2 I understand there might be some reason for that.

3 Frankly, especially in Upstate New York, we
4 may have less minority firms available, right, and
5 so they don't want to feel bypassed or overlooked.
6 Right?

7 And I understand it -- that.

8 However, if we are talking about bringing in
9 people, like disabled veterans, and things like
10 that, that the idea of just adding more on; adding
11 more percentages on to percentages that are already
12 aren't being met, aren't going to make it easier to
13 meet the goals.

14 It's just going to make it harder and it's
15 going have more problems.

16 So I think that at least a discussion should
17 be had within the agencies of combining whatever
18 goals, or whatever requirements you think you may
19 want, to further -- you know, further the, I don't
20 want to say the advocacy of any particular group,
21 right, but you could -- should combine that, and try
22 to keep those -- all of those -- the total should be
23 within a reasonable amount.

24 As I said earlier, if you're only
25 subcontracting 20 percent of the job, you can make

1 the goal 60 percent. It's not going to be met.

2 It's just not going to happen.

3 The other thing, as far under an immediate --
4 I think something immediately needs to be done, is
5 to improve the outreach process.

6 As Pat Murnane was talking about it, some of
7 the things you do when you're trying to get a
8 waiver, or trying to meet your goals, Tina Purcell
9 talked a little bit about the same thing,
10 oftentimes -- and bidding is a stressful time.

11 You oftentimes don't -- everybody thinks,
12 well, you have all this time to put all these bids
13 together.

14 Well, you start putting your bid together,
15 but, when you're waiting for pricing from suppliers
16 and subcontractors, it often happens, literally, at
17 the 11th hour, you get all your numbers, and then
18 you add it up in a hurry.

19 You've got a month to get ready, and they got
20 a half hour to put it together.

21 And those things happen.

22 So you don't always make your goals.

23 It's nice if you do.

24 But usually what happens is, you get your
25 solid prices from your solid subcontractors, both

1 minority and non-minority, women and non-women,
2 because they -- you've worked with them, they have
3 comfort, you know them, they come in.

4 If you miss the goal, now you're back out
5 looking.

6 And I can't tell you the number of times that
7 we go back and we say to whatever the agency might
8 be, Well, we've submitted, here we have it. We
9 didn't make it. What do we do?

10 And the response is, Well, we have a link for
11 that, and you can link on and you can get the list.

12 It's thousands.

13 The last time I did it, which was recently,
14 I think there was 4800 firms.

15 The first one happens to be a consulting firm
16 out of Falls Church, Virginia.

17 It goes on and on and on.

18 And you don't know who these people are.
19 It's just -- I mean, it's 4800 names.

20 And we've had -- and the answer is: Go to
21 them and reach out and get them.

22 Oof.

23 I mean, it's -- if you try to look, and then
24 you try to look, and you can -- you know, you can
25 narrow your search.

1 But it's -- when you get down to it, I tried
2 that, and the last time it came up, I came up with
3 less than 40 who have construction credentials in
4 the North Country, or who profess to work in the
5 North Country.

6 Some of them we knew.

7 Some of them don't do the work that we try to
8 do.

9 Some of them I don't believe are even
10 functional anymore. We used to work with them.

11 And the list doesn't include people that we
12 already are subcontracting to.

13 And I guess the -- kind of the point is two
14 things.

15 One is, that the agencies that have knowledge
16 in the kind of work that they do I think could help
17 foster that list.

18 You need the whole list, and not -- you know,
19 obviously, the bureaucracy, the people that have to
20 work with -- and try to put this program together,
21 you know, you're a bit of a -- you're at -- you need
22 the input.

23 You're -- you -- the people come to you, they
24 give the information. You have to put it together
25 in a list. Your hands are kind of tied.

1 The departments can't make people come and
2 sign up.

3 However, just by making a list and putting
4 nothing else into it, not trying to sort it through,
5 not trying to help, not trying to put out a list,
6 maybe a department list, does not aid in going out
7 with your outreach after bid.

8 And I don't want to beat that horse; it's
9 already dead.

10 One idea that might help, and this is -- I'm
11 not trying to put more work on the departments --
12 pre-bid.

13 Pre-bid.

14 We have advertisements for pre-bid.

15 If an agency knows they're bidding, you know,
16 a bridge or a building, or whatever they happen to
17 be putting together, and you've advertised for the
18 bid, they also have been receiving the submittals
19 for the packages after every bid.

20 You know, we call -- they have a -- a --
21 AAP 19s within the department of transportation.
22 Right? They have your list of your -- of your
23 minority and women businesses.

24 They have those; they have them from all the
25 con -- competitors, all the different contractors.

1 They have these lists, they know who's
2 bidding.

3 It was easy -- it would be easy if they put
4 simply a mail list, you know, a listserv, kind of a
5 list together.

6 And they could, as part of their bid
7 advertisement process, is simply put out a bulk mail
8 on every job that went out. And you could even
9 attach -- attach a link to the job documents. And
10 if you have an attachment to the plan holder's list,
11 attach it.

12 There's nothing reason about going out early.
13 Right?

14 Because they're relying on the contractors to
15 do it now.

16 And like I say, you're trying to put a bid
17 together, you're mostly dealing with people you
18 know, you're mostly dealing with people you have
19 comfort with. You're not going out to everybody.

20 So that's just an idea.

21 It may or may not work, but you can put it in
22 your list of things to do.

23 Long-term -- intermediate and long-term
24 future.

25 That's hard, frankly, I think, because it's

1 going to involve increasing the number and capacity
2 of MWBE firms in construction-related fields.

3 And, let's face it, we have a problem,
4 I think, in the construction industry.

5 We aren't bringing young people in.

6 We aren't bringing people in.

7 It is not a sexy career anymore.

8 Everybody wants to be in IT or a
9 professional.

10 It's tough to find people who want to work in
11 a craft, but -- and part of it is our fault.

12 And the AGC, I know, has done work, you know,
13 job fairs and outreach for -- in schools and things.

14 But construction is much more than just
15 driving nails. There's a lot to it.

16 There's a lot of business into it.

17 There's engineering with it.

18 There's a lot to that.

19 But, somehow, our future in -- for an MWBE
20 program involves bringing more firms together, but
21 you need to build that from the foundation.

22 And what I -- in the long term, you're going
23 to need to bring youth, young people in, young
24 people who want to be business leaders, people who
25 have an interest and an aptitude, you know, for

1 construction, and have training in whatever the
2 field it might be.

3 It might be engineering, it might be
4 business, it might be accounting; all those things
5 that might go into running a business.

6 Because now we're talking about our business
7 firms.

8 The point was made earlier, not everybody
9 wants to own a business.

10 That's for sure.

11 Right?

12 And they are a little bit tied together.

13 But the understanding of this working group
14 is for -- to promote minority businesses.

15 But, somehow, you need to start that by
16 bringing people into the industry who want to be in
17 construction, number one. And then might realize
18 they might also want to own a business.

19 And how you do that legislatively, I don't
20 know. That's difficult.

21 That's -- for me, that's a difficult concept:

22 How do you get the young people?

23 How do you get those kids that are 15, 16,
24 18, 20 years old now, to take an interest, to go to
25 engineering school.

1 There's plenty of them in New York to go to.
2 They're great ones.

3 I didn't.

4 I went out of state, but I came back.

5 You know, and all that is available here in
6 New York.

7 It's a great place to be, it's a great place
8 to live.

9 I spent a lot of time in the North Country.
10 I grew up mostly on the St. Lawrence River.

11 It's disheartening at times to see the
12 difficulties the North Country faces.

13 But, thank you for putting this together, and
14 listening to me. (Indiscernible.)

15 Thank you.

16 SENATOR AKSHAR: Thank you, Mr. Burns.

17 Senator Ritchie.

18 SENATOR RITCHIE: Kim, just, I think what you
19 had to say kind of showcases the whole issue,
20 capacity issue.

21 If we're already dealing with that, you would
22 think the State would be working across the board to
23 simplify it, to make sure there's resources on the
24 ground to help people who are applying, versus
25 drawing it out and then finding reasons to deny

1 people certification.

2 So, I appreciate you coming and telling your
3 story because that kind of showcases the reality of
4 how long it takes to get certified.

5 And, Andy and Casey, thank you for coming.

6 You kind of talked about something that we've
7 talked about here, about making sure that there's
8 some kind of outreach locally in the region when
9 issues come up; instead of trying to reach out to
10 somebody on the phone, having somebody there in
11 person who knows what needs to be done to help you
12 make your way through that.

13 So your comments certainly take those to
14 heart, because we've already mentioned that that's
15 something, along with building capacity, that need
16 to happen.

17 Thanks for coming.

18 SENATOR AKSHAR: Senator Little.

19 SENATOR LITTLE: Thank you.

20 This is really one of the better hearings
21 I think that we've had, because we're really getting
22 specific examples, and we're getting some ideas,
23 going forward.

24 So, thank you.

25 Kim, you, in your discussion, have proven

1 that being an MWBE is an asset, because you've seen
2 that you lost business to out-of-state,
3 out-of-the-region companies, because you're not.

4 The second thing is, you talked about your
5 family-owned business and you want to pass it on to
6 your children.

7 I assume they were a boy and a girl?

8 KIM BOVEE: Yes.

9 SENATOR LITTLE: This agency, and this whole
10 MWBE, does not understand family-owned businesses.

11 So you've got to tell your daughter that
12 she's going to have to have a bigger share of the
13 inheritance than your son, and that she can't make
14 as much money.

15 Even if, we had one case, where it was a
16 sister and brother, and they were denied. The
17 brother was making more money than the sister.

18 While the brother was out getting the
19 contracts, and out in the field, where she was doing
20 the management, the hiring, the human resources, all
21 kinds of the paperwork, the bidding, the whole
22 thing, putting everything together.

23 He could do it, but he had to do it as a
24 commission.

25 But if it was his salary, couldn't -- they

1 weren't eligible, and they got denied.

2 There's something wrong.

3 That they have to begin to understand that,
4 in the North Country, a lot of our businesses are
5 family-owned businesses, and they're generational,
6 and we're happy about that; that people aren't
7 moving away, that are staying here.

8 And this doesn't encourage that.

9 So I thank you very much.

10 The other thing I think is, someone mentioned
11 the federal minority- and women-owned business.

12 If we had that as a basis, and then maybe we
13 had some enhancements to it, where it's possible,
14 maybe we could work on something look that, because
15 that's easier to get and more reasonable.

16 And the other thing, having a face-to-face
17 meeting.

18 If in the North Country you could come here
19 to this building, meet with people, get a yes or no,
20 you need this, you don't need that, this is wrong,
21 and as a pre, before you apply, that would be very
22 helpful.

23 So, thank you to all of you for being here.

24 SENATOR AKSHAR: Senator O'Mara.

25 SENATOR O'MARA: Yes.

1 Thank you.

2 Casey, I want to thank you for your comments,
3 particularly in regards to workforce development,
4 and those issues of how we get younger people
5 interested in these types of careers.

6 I'm a firm believer that, over the past
7 several decades, our education system has failed a
8 large segment of our youth by forcing everybody
9 towards college.

10 We've done it in our high school degree
11 programs.

12 BOCES had gotten away from career technical
13 training.

14 We are doing a lot of work, all of us here,
15 and the Legislature as a whole; that's the
16 number-one issue we have.

17 Jobs are out there.

18 It's skilled people to fill those jobs.

19 I think we're seeing some progress through
20 our BOCES in getting back into more -- some of this
21 stuff, and, certainly, working in coordination with
22 our community colleges.

23 In my area we have seen positive steps, but
24 we've got a long ways to go, and it's changing a
25 whole mindset of, every kid must go to college,

1 which just isn't realistic. And we've been chasing
2 that for far too long. So that's a goal of ours.

3 And, Kim, your story is one that I hear every
4 other week.

5 My office, and I'm sure every one of my
6 colleagues' offices, deals, virtually, weekly with a
7 new entity trying to be qualified as an MWBE.

8 The process is onerous, it's non-responsive,
9 it takes too long, and people give up, like you did.

10 There seems to be a presumption from -- in
11 the qualification process, that the woman or the
12 minority is trying to scam the operation. That
13 there's no way that you, as a woman, are qualified
14 to run this business, which is totally the anti of
15 what we're trying to do here.

16 That you, who is not an electrician, but runs
17 the business, is not really running the business.

18 I see it time and time again.

19 And, my office, and, you know, work with
20 whoever your Assembly and senator representatives
21 are, because we do a lot of work on this.

22 And, you know, I wish I could say we get
23 better results.

24 Every once in a while we pull a rabbit out of
25 a hat, but, things just languish far too long.

1 For the importance that this Administration
2 is trying to put on promoting minority and
3 women-owned businesses, to qualify as one takes half
4 a decade to do it, and they accuse you of being a
5 liar and a cheat the entire time.

6 KIM BOVEE: Right.

7 SENATOR O'MARA: And that's a horrible thing
8 to be put through by our state government.

9 So, thank you for sharing that with us today.

10 KIM BOVEE: Thank you.

11 SENATOR AKSHAR: I want to welcome our
12 esteemed colleague hailing all the way from
13 Nassau County, Senator Kemp Hannon.

14 Senator, thank you for joining us.

15 SENATOR HANNON: (Inaudible.)

16 SENATOR AKSHAR: Senator Sanders.

17 SENATOR SANDERS: Thank you.

18 I think that one of the things that we --
19 that the panel has certainly seen, or pointed out,
20 is that lists a dynamic. That every time you
21 create -- anytime you make a list, it's already
22 wrong.

23 Somebody's dropping out. Somebody's coming
24 in.

25 Somebody -- anytime that you make a list,

1 it's already wrong.

2 So lists are dynamic. You have to have
3 people prune the list. They have to go steadily
4 into it and make sure that the list is real.

5 One of the things that we will have to look
6 at is the underfunded -- I hate the word --
7 compliance unit; the unit that is supposed to --
8 somebody should be managing the list. And perhaps
9 it should be the agency itself, and, they should, in
10 one sense, vet the list.

11 Imagine how much time that would cut down for
12 you, Mr. Burns, if there were a true list that was
13 vetted; that everybody on there had the ability to
14 do the work, et cetera.

15 And under those conditions, it might be good
16 to give that task to them, in exchange for us
17 backing a proper -- I mean, I don't know how many
18 people they have.

19 I think they have around six to eight people,
20 or something like that, to do the entire state.

21 Come on now, you can't do it.

22 I mean, this is not Rhode Island, as worthy
23 as Rhode Island is.

24 Maybe six to eight in Rhode Island would be
25 more than enough.

1 But, here, you could easily use three times
2 that amount to cut down on the time that people
3 have.

4 So, even as we think of things, we should be
5 trading things off and say, Hey, we'll give you more
6 funding, assuming that we can work out what they are
7 doing, what -- you know, making sure that they are
8 going the right thing, whatever that -- we decide
9 that is.

10 Just observations.

11 I may have some disagreements with different
12 points that some people have.

13 But, the points that you're raising are valid
14 and really need to be addressed; they need answers.

15 Thank you to all of the panel.

16 Chairs.

17 SENATOR AKSHAR: Thank you all for your
18 testimony.

19 In the interest of time, we're going to do a
20 little combination effort here.

21 So, Danny Fitzpatrick, I'll invite you up,
22 and Barry Smith and Holly House.

23 SENATOR AKSHAR: You okay with that?

24 SENATOR RITCHIE: (Nods head.)

25 SENATOR AKSHAR: Mr. Fitzpatrick, the floor

1 is yours.

2 DANNY FITZPATRICK: Thank you very much,
3 Senator.

4 And, Senators, thank you for being here; it's
5 very much appreciated.

6 Today I'm here actually in a dual capacity.

7 I am both an employee of the Onondaga County
8 Water Authority, and the Lafayette Town Supervisor.

9 And I previously submitted to
10 Senator Ritchie's staff our commentary from the
11 water authority about the potential changes to the
12 MWBE requirements, particularly the ones that were
13 proposed by the Governor's Office earlier this year,
14 which included a 53 percent requirement on
15 construction projects.

16 As supervisor, which is where I prepared most
17 of my remarks, we have had an interesting experience
18 with the MWBE program.

19 As, you know, a newly-elected supervisor,
20 I've met with our association of towns in Onondaga
21 County, and I said, What are we doing about this?

22 And the universal answer was: Nothing.

23 We're not speaking out, we're not talking to
24 people, we're not getting involved, and, we don't
25 care.

1 Which I -- to me, seemed to be the wrong
2 approach to this.

3 This is a serious matter that affects us
4 anytime we're doing business with the State, anytime
5 we're doing business with the County.

6 And with, especially in Onondaga County,
7 where "consolidation" has become the big word of the
8 day, and we move towards more and more
9 consolidation, this will become more and more the
10 business of the town.

11 In my short time as supervisor, and following
12 in my predecessor's footsteps, I think it's very
13 important to focus on how the local development in
14 our area, as opposed to bringing in contractors from
15 Buffalo and New York City.

16 For us, we've been very fortunate.

17 Our Town employs an engineering firm. Six of
18 those engineers live in town.

19 Our Town attorney's from our town.

20 Almost all of our Town contractors have some
21 direct connection to the town or the surrounding
22 towns.

23 If you take the six surrounding towns around
24 Lafayette, there's almost 100,000 people. It's
25 larger than many counties in New York. And -- but

1 the demographics there do not reflect, much less a
2 30 percent, much less a 53 percent, MWBE
3 requirement.

4 It's just not reflective of the makeup.

5 We're almost 94 percent Caucasian in those
6 six towns.

7 There's no way we're going to be able to meet
8 these requirements and keep the jobs where we live,
9 amongst our neighbors, which I think is the most
10 important part of all of this.

11 And I think, from a Town perspective, from a
12 perspective, not speaking for the association, but
13 in my involvement with the association, I'm going to
14 encourage them to become more involved and more
15 aware of this, especially as we consolidate.

16 You know, we -- in Lafayette, we've
17 consolidated with four other towns for trash
18 service. And even with the consolidation, and just
19 bidding it out this past week, we got two bids, yet
20 neither were qualified for MWBE.

21 And even if we bid it another ten times,
22 waiting; meanwhile, trash is building up in our
23 constituents' yards, we would never meet anything
24 close to a 30 percent requirement.

25 It just wouldn't happen.

1 SENATOR AKSHAR: Thank you, Danny.

2 Holly.

3 HOLLY HOUSE: My name is Holly House, and
4 I have 30 years in the fire-protection industry.

5 I worked for one of the largest installing
6 contractors in New York State for 26 years. I was
7 their office and purchasing manager.

8 I purchased all of the materials for the
9 construction inventory, I did their inventory, I did
10 the AIA billings, I did -- negotiated change orders.
11 I just did whatever had to be done.

12 In 2014 -- '13, my boss decided to do a
13 management change. He decided to step down,
14 part-time, and management turned over.

15 I knew the writing on the wall was not going
16 to be good for me at this point.

17 It was the greatest job a woman could have
18 ever had.

19 I had men who had brought me up in the ranks,
20 they gave me every ability to grow.

21 But, there were also men that just were not
22 going to have it.

23 So, I decided I would use the knowledge that
24 I had for the National Manufacturers of Sprinkler
25 Systems, and I went to the five national

1 manufacturers and I said to them, Will you allow me
2 to open up a woman-owned business, distribution, in
3 New York State?

4 There is nothing.

5 If you want any one of those manufacturers,
6 you have to go to an installing contractor. They
7 have the open contract.

8 So it took them a couple months to come back
9 to me, and said, Okay, we're going to do this.

10 And I said, Well, you all have to play nice
11 in the sand. You know, I'm selling all of you.

12 So they're, like, Okay.

13 So, for instance, if you go to Ferguson
14 Enterprises, you can only buy a Tyco or a Victaulic
15 sprinkler head.

16 If you go to Webb, you can buy a Viking or a
17 Victaulic.

18 But if you come to Allsource Fire Supply, you
19 can buy all five, and, from the manufacturer.

20 So I opened up the business in 2014.

21 I left AB, my company, in 2016, and I said,
22 Okay, I'm going to do this.

23 So in 2015, of August, I went for my
24 application. It was easy. They certified me in
25 two weeks. It was a piece of cake.

1 I had wholesale, but, I had 30 years'
2 experience. I was buying right from the national
3 manufacturers.

4 Yes, I had an office in my home. I was
5 starting out as a small business.

6 The subcontractors were elated.

7 They said, you know, Finally, we have someone
8 who we know knows what a sprinkler head is.

9 You know, we can buy from you no matter what
10 architect's specs, no matter what manufacturer, we
11 can go to you and get it.

12 Great.

13 I was selling, my biggest customers were
14 Cornell University. I've been selling to them since
15 1996.

16 Didn't have to do with construction projects,
17 but, they have hundreds of buildings on their site.
18 And each building, as it's built, has a different
19 manufacturer sprinkler head in it.

20 And you cannot just go in and take out a
21 Reliable head and put a Viking one in because it was
22 designed, per the spacing, per the degree of the
23 sprinkler head.

24 It could be a 155, it would be a 160, so you
25 can't just take it out and put somebody else in.

1 So they needed someone who could supply them
2 with everything, and I had been doing that since
3 1996 with the installing contractors.

4 So when I decided to open up my own company,
5 I went to Cornell and said, "If I do this," and they
6 said, Yes. And they said, And if you get certified,
7 it's even more helpful for us, but, we will still
8 support you.

9 And since 2014 I sell them everything that
10 they need.

11 So in 2015, did the application, certified in
12 two weeks.

13 Great. Did a little party dance in my
14 office. I'm, like, all right. You know, I've got
15 this. I've got, legit. I'm legit. I can go out
16 there.

17 I got ahold of the -- I contacted a lot of
18 the general contractors because they knew my name.

19 They saw me signing the AIA documents.

20 They saw me, you know, negotiating change
21 orders.

22 I was the one that told them, Yeah, we'll be
23 on-site here because that's when the materials are
24 coming.

25 So I went to them and I said, Okay, here

1 I am.

2 I went to the subcontractors, there's only a
3 handful, and they were -- you know, I was their
4 enemy for the longest time. So now I'm -- you know,
5 we all have to -- so they were very grateful,
6 because, back in the day in the '90s, I did both.

7 In the '90s I bought from MWBEs who sold a
8 paintbrush, because they had a certification number
9 that said "construction materials."

10 So when I got mine, I was just -- you know,
11 it was legitimate. I know I can do this. And
12 there's no way that anybody's going to be able to
13 have to worry about buying materials from me.

14 So, 2015, so, it was still a little bit of a
15 struggle. I'm still a woman-owned business, and,
16 you know, construction is mainly man-driven.

17 So in 2016 I decided, in March of 2016,
18 I said, you know, I said, there's not a company up
19 here that fabricates the sprinkler systems.

20 Takes a 1-inch piece of pipe, threads both
21 ends, puts the fitting on it, codes it. This is the
22 piece. You know, gets it cut to length by the
23 designer criteria.

24 I said, you know, I'm going to open up
25 something, and I'm going to just do quick-hitters.

1 Say they got a renovation for a building and
2 they need, you know, each floor done.

3 We can whip it up and we can deliver it to
4 them, you know, just quick-hitters.

5 I'm not going to be doing, you know, big
6 warehouses. I didn't want that.

7 But I thought, this would something that will
8 give me more respect with the industry; that they
9 wouldn't think I'm just sitting there selling an
10 invoice at a computer.

11 And I enjoyed it.

12 I am out there.

13 To this day, I am out there.

14 I gave up fake fingernails for grease.

15 I'm out there cutting the piece of pipe,
16 I label it, I get it ready.

17 And my -- I have one employee, and they get
18 everything ready. And I have a part-time employee.

19 So in 2000 -- in March of 2016 I had to go --
20 I went to the State to get another code:
21 Manufacturing.

22 And no one in Upstate New York does this.

23 When you buy fabrication for a sprinkler
24 system, it's in Long Island, Massachusetts,
25 New Jersey, they're all down there, because I bought

1 from them.

2 So once I put this new code request in, my
3 company, all hell broke loose.

4 There was the end of supplying fire
5 protection for my company.

6 I lost 50 percent of my business for sales,
7 is gone.

8 What I opened up my business to do is no
9 longer even what I -- is my main process.

10 So they came back at me and said, in 2016,
11 New York State did this thing called "supplier
12 versus brokers."

13 Now, everybody knows that a broker and an
14 agent in New York State is nothing but a swear word;
15 always has been, always will be.

16 So what New York State did is, they took it a
17 little bit farther and they said: We're going to
18 take care of this, you know, invoice flipping,
19 suppliers versus brokers.

20 So what they did, in 2016, is they came out
21 with a criteria to separate suppliers from brokers.

22 So if you are -- if you want to have a
23 supplier code in New York State, you have to supply,
24 40 percent of your inventory has to come out of a
25 warehouse and be supplying.

1 Now, first of all, that's a problem if you're
2 a small business and you're trying to get yourself
3 going.

4 I mean -- and, for me, it was ten times worse
5 because I'm not selling a toilet.

6 I'm selling a sprinkler head.

7 And the five manufacturers, each one of them
8 manufactures 200 different sprinkler heads.

9 So there's no way at this point, when I'm
10 just starting out, that I would be able to pick a
11 manufacturer, much less be able to stock 40 percent.

12 I did a very, very large job, a sprinkler
13 job, when I had the supplier code. And I supplied,
14 you know, thousands of sprinkler heads to the job
15 site.

16 Not me physically.

17 It came from the manufacturers, because
18 I couldn't -- I'm not going to supply 1,000 -- you
19 know, and the fabrication.

20 With -- when I did that project, that
21 slingshotted my revenues huge.

22 I made a very minimal amount, but it was
23 constant money, which was great.

24 Now, my revenues are so high that I need to
25 stock three hundred and fifty to seven hundred

1 thousand dollars worth of inventory in order to get
2 the "New York State golden-ticket supplier code,"
3 which is 423850.

4 So, I went to battle.

5 I went to Lourdes Zapata; I went to Phillip
6 Harmon, which is the legal; I went to anyone who
7 would listen to me, and I said, Look, I am your
8 poster child.

9 I came in this knowing both sides of this.

10 You know, there's nobody qualified -- not
11 nobody -- but, the qualifications, as you've heard
12 from all of these GCs, that's what they're looking
13 for.

14 So -- and they just kept saying, nope, nope,
15 nope.

16 So in the end, they have given me a -- a bare
17 agent code. Doesn't even say that I supply
18 sprinkler systems.

19 It doesn't say anything. It just says that
20 I'm an agent/broker.

21 They've given me a description of
22 "manufacturer," which was great. That saved my
23 company.

24 But the description on the directory, when
25 you go to look for someone, it says, "fabrication of

1 pipe and fittings," which is correct. But then it
2 says that I assemble sprinkler systems.

3 I don't assemble sprinkler systems.

4 I sell all of the materials, but they don't
5 know that. No one knows that anymore.

6 And now when I go to a GC or a sprinkler
7 contractor, and say, Hey.

8 You know, perfect example is
9 Viking sprinkler. Syracuse University will only use
10 Viking sprinkler on their projects.

11 I could do all of their jobs. I could supply
12 all those materials.

13 But the minute they look at me and see I'm a
14 broker and an agent, nope. No. No way.

15 So when I talked to Lourdes, and I talked to
16 Phillip Harmon, which is the legal, his comment was:
17 Well, you know, when you have to prove this
18 40 percent inventory, you also have to separate your
19 manufacturing materials from your regular materials,
20 and that has to be separate also.

21 So, now, not only do I have to have
22 40 percent of sprinkler heads, which, any one
23 sprinkler head probably costs -- I don't know -- \$5,
24 up to 80, so I have to have, 40 percent of my
25 revenue is sitting in a warehouse, hoping that an

1 office job will come up that is 155-degree, chrome,
2 Pendent, 5.6 K-factor, and I got it on my shelf, so,
3 hopefully, they'll buy it.

4 It's not possible.

5 There are things called "fire pumps."

6 Fire pumps, and there's --

7 And I brought you a copy of this.

8 -- there is a thing called a "dropshipping
9 and a large bulk item," where I would be able to
10 dropship. And you have to be technically. They
11 said that you have to prove that you are this
12 technical entity.

13 So I said to Phillip Harmon, I said, I am
14 this, I'm technical. I cannot manufacture a fire
15 pump, but I need to ship that fire pump from the
16 manufacturer to a job site, because no one's going
17 to handle it. That's a large bulk item.

18 I have to do an entire truckload of
19 fabricated pipe from the manufacturer in Long Island
20 up to New York State.

21 You know what he said?

22 Oh, well, we really haven't determined the
23 criteria of that yet.

24 I said, Really? Okay.

25 So the end of my story is, all I've heard is,

1 you know, we cannot get qualified MWBEs.

2 I've heard Kim's story.

3 I've heard tons of women right now, that have
4 been in the system for two years.

5 My reapplication is in the system again.
6 I put in it in May.

7 I have given them as much inventory turn as
8 I can possibly show them for sprinkle heads.

9 But, it has absolutely destroyed a small
10 business, putting this percentage.

11 And I said to Lourdes Zapata, I said, Okay,
12 so why don't you take a look at these companies?

13 If you're trying to stop this invoice
14 flipping for suppliers, why don't you take a look at
15 them?

16 Why don't you visit their facility?

17 Why don't you see what they're selling?

18 Why don't you knock them down and say, Okay,
19 give us 20 percent on your shelf, and then as you
20 grow, we can increase?

21 Nope.

22 They got sick of hearing me. They will not
23 return my phone calls, they will not return my
24 e-mails.

25 I have asked them several times to simply

1 change the description in my directory to say,
2 I sell fire protection, even though I'm a broker.

3 Please just say that, and take away that
4 I assemble fire-protection sprinkler systems.

5 Nope.

6 No.

7 So, I'm very disgruntled.

8 I went to the very first Albany MWBE. They
9 have them in the fall.

10 I was ecstatic. I thought, this is great.

11 I've never been back, and I won't go back.

12 And the fact of the matter is, is that you
13 say that there's not enough people.

14 There haven't been enough people looking at
15 these applications and doing the recertifications
16 for about four or five years.

17 So the answer to your problem has already
18 been there for long enough for this to not have
19 changed.

20 One of the other suggestions I have is, put
21 up a small office in Syracuse, Buffalo, Albany,
22 downstate; one little small office with maybe two
23 people. Let them review your applications. Let
24 them see what it says.

25 And then the final can go down to New York

1 City.

2 But there is no one to talk to except for
3 New York City.

4 And the other problem is, is they have no
5 edu -- they do not have education.

6 When I first went in to get my manufacturing
7 code for pipe and fittings, I sent them a schematic
8 that a designer sends to me.

9 It says: Here's a piece of pipe. It's
10 ten-foot six long. There's a label on it. And you
11 put two fittings on the end of it.

12 They made me a tool manufacturer.

13 And as many times as I called her and had a
14 conversation on the phone with her, and said, Okay,
15 you know, not only is people not going to find me,
16 but that's not what I do.

17 Well, that's what we do.

18 I said, Well, DBE came to my facility. They
19 coded me as a "pipe and fitting," and they gave me
20 this code.

21 So she says, Oh. Okay, I'll give you back.

22 So the education there also has to -- you
23 can't go forward helping these GCs find good
24 companies like mine, if you can't put the education
25 in it, and you can't listen to us trying to make

1 this program legitimate.

2 And, hopefully, they'll open up my
3 (indiscernible) application and I'll get the golden
4 buzzer, like, you know, is on America's -- and I'll
5 get the eight -- you know, 423850 code.

6 There's only one company in New York State
7 that has that supply code. She's downstate, and she
8 only offers one manufacturer out of the five; but
9 she has the supplier code.

10 The problem is, is that the broker fee, when
11 the GCs come to me, and they're, like, Okay, so
12 what's your broker fee?

13 Well, my broker fee could be something for a
14 sprinkle head, but it could be something for a dry
15 pipe.

16 And in the end, they look at me and they say,
17 We just can't. There's not enough for us to get out
18 of you to meet our goals.

19 And they don't.

20 I've stopped going to -- I went to LeChase
21 in Syracuse, the last one I went to. I raised my
22 hand and I asked them, I said, What are your views on
23 the supplier versus broker issues?

24 And they said, We don't know.

25 We don't know.

1 So I've stopped going to those.

2 I -- my manufacturing code is allowing them
3 to get 100 percent of the spin.

4 So I sell two or three thousand bucks,
5 five thousand bucks, but -- but I'm small, so
6 I can't do the huge jobs to get their goals up where
7 they need to be. But it helps.

8 It does help.

9 One other comment I wanted to make is that,
10 when I was going through this huge fiasco in 2006,
11 when they made me an agent from a broker, is the
12 certifying agent put in an email that she's just
13 upstate, working out of her garage.

14 And I'll tell you what, if I could have drove
15 down to New York City and found that woman, I would
16 have showed her the grease under my fingernails.

17 I would have showed her how hard I have been
18 working to just be legitimate in this business.

19 SENATOR AKSHAR: Thank you, Holly.

20 Mr. Smith.

21 BARRY SMITH: Thank you very much.

22 Well, good afternoon now, Senators.

23 I did provide a copy, so I understand we're
24 trying to cut to the chase, and so I'll just
25 paraphrase for you. It's too much a lunch.

1 I am Barry Smith. I'm vice president of
2 Northern Tier Contracting.

3 Northern Tier Contracting is a general
4 contractor based in Gouverneur, St. Lawrence County.

5 Senator Ritchie, if you just show
6 Senator Sanders where that is, you get out in your
7 vehicle and you just keep going north -- you run out
8 of highway, but you'll get there eventually. But
9 it's up there.

10 I'm a numbers kind of person, so I'll just
11 kind of hit the highlights of the numbers for you.
12 Okay?

13 2012 we started our business, my partners
14 and I.

15 A couple of craftsmen, two laptop.

16 We rented 400-square-foot of office.

17 We invested \$150,000 off of our own money to
18 start the company.

19 Today I'm proud to say that we employ
20 52 full-time employees, and 42 of our employees are
21 classified as trades craftsmen, 10 are in the
22 office, professional support staff.

23 I think he left.

24 Did Patrick leave?

25 He did; right?

1 When you were talking about who the "big" is
2 when they compete for -- they're the "big."

3 They're the "big."

4 And -- he's the "big," yeah.

5 So that's our staff, that's where we are
6 today, okay, after just six years.

7 2017, grossed \$11 million in construction
8 revenue.

9 2018, looks like we'll probably do
10 \$16 million in contract revenue.

11 Next line.

12 87 percent of all our business is done with
13 New York State public entities: OGS, DASNY, State
14 University Construction Fund, local school
15 districts, et cetera.

16 Okay?

17 Not necessarily by design, but probably out
18 of necessity, because, again, remember I said,
19 St. Lawrence County.

20 All public-funded projects are competitively
21 bid, open process, okay, 'cause that's the law.

22 New York State agencies award contract, the
23 lowest responsible bidder.

24 In my 12 years I've been associated with this
25 industry, I have never once witnessed a New York

1 State agency award a contract based on gender or
2 ethic background.

3 Never once.

4 Projects are wide-ranging. We perform about
5 50 percent of our work ourselves, 50 percent
6 subcontract, depending upon the nature of the work.

7 Okay?

8 To be competitive, obviously, as a general
9 contractor, we have to use the lowest responsible
10 subcontractors' bids; otherwise, we won't be
11 competitive.

12 All state agencies hold us responsible for
13 the performance of our subcontractors.

14 Okay?

15 So what is -- what is the process?

16 And I'm about to tell you, this is
17 proprietary information, for those of you who don't
18 know how this works.

19 First, we solicit bids from 280 MWBEs
20 statewide.

21 That is the number, last month, of
22 people/MWBEs, in New York State, that have
23 "construction" attached to their name.

24 Now you just -- you guys know how much
25 business you do, so we're all hitting

1 280 vendor/subcontractors.

2 Okay?

3 So, earlier there was a comment made about
4 how -- are they -- yeah, sometimes they do suck,
5 because they are flat out.

6 And guess what? They have a lot of choices;
7 they have a lot of choices who they want to work
8 with.

9 So when they look at the map, and they look,
10 Potsdam, Canton, they go, No, thank you.

11 Okay?

12 But we do.

13 We were informed some time ago by a very nice
14 state agency director, that looking in our geo --
15 our own geographical area was not an acceptable
16 good-faith effort.

17 Okay?

18 So we purchased a software package. I will
19 not give you that name. Okay?

20 And what we do is, we send digital
21 invitations to bid to all those 280 on every single
22 project we bid, public and private.

23 Okay?

24 That program tracks their interaction with
25 the program. It provides them, free of charge, the

1 plans and the specifications.

2 Our estimator is available to answer their
3 questions and help them prepare their proposal.

4 Pretty much, that's a pretty good faith
5 effort.

6 Okay?

7 So on bid day our estimators consider all
8 quotes and proposals received.

9 The lowest bidder in each scope, typically,
10 we have about 15 individual scopes of work for
11 subcontractors.

12 They consider them all.

13 They put them together.

14 No different than New York State, we like to
15 accept quotes, and use in our proposal, the lowest
16 responsible bidder.

17 Only makes sense.

18 If the project has an MBE requirement, okay,
19 and the -- we have a quote from an MWBE that is not
20 low, but is not greater than 5 percent, we will
21 consider that bid for inclusion.

22 Okay?

23 If it is, then I, and I alone, will value the
24 potential impact of including that higher cost into
25 our proposal; therefore, would it knock us out from

1 being competitive?

2 Because we're trying to beat the "biggs."

3 Right?

4 Okay.

5 That's how we put together our quote.

6 I think Mr. Burns highlighted earlier, the
7 last 30 minutes before HR (indiscernible) bidden is
8 absolute chaos-crazy. And it is not a very good
9 time to be making decisions like that, especially if
10 you're receiving quotes from subcontractors from out
11 of the area who you don't know, and you're trying to
12 determine, are these responsible -- is this a
13 responsible number that I should be putting into
14 your project?

15 Okay. Bond notification, that we're the
16 apparent low bidder, we have 72 hours -- that's your
17 rule -- to submit our utilization plan.

18 If we don't have enough participation at the
19 time, which we never do, I contact all our non-MWBE
20 selected subcontractors and I ask them to look for
21 utilization opportunities.

22 If they do have opportunities, 99 percent of
23 the time, it is them buying material from an MWBE
24 supplier.

25 Okay?

1 So if I hire a fire-sprinkler installer,
2 okay, and then we'll say to them, "Hey, can you
3 guys, you know, provide us with some MWBE coverage?"
4 they say, Yep, that's fine.

5 In the right time, place, they would go to
6 Holly and get the material there, and so I can
7 second-tier that utilization on my plan.

8 Okay?

9 So within 72 hours we put together our
10 utilization plan; we have commitment, we make our
11 subcontractors commit to it, and we send it off to
12 the agency.

13 Okay?

14 You guys have already heard it. You know the
15 number, 30 percent utilization.

16 We never have been able to offer 30 percent
17 utilization.

18 In approximately 95 percent of our plans, we
19 submit for what is formerly called a "partial
20 waiver."

21 Okay?

22 We have never submitted for a complete
23 waiver. It probably would never float.

24 But we always submit for a partial waiver.

25 On average, over the past five years,

1 Northern Tier Contracting, in St. Lawrence County,
2 has achieved a 20 percent utilization rate on all
3 our state projects.

4 Okay?

5 Most of our MWBE participation comes from
6 outside the area; in most cases, as far away as
7 Rochester.

8 In order to get our partial waiver approved,
9 we submit a waiver package that is no less than
10 28 pages long.

11 Okay?

12 That is for us to demonstrate that we, which
13 is the law, the utilization goal, or, a good-faith
14 effort.

15 All right?

16 So to demonstrate that we did have -- put
17 forth a good-faith effort, that's about what it
18 takes to get through the agencies.

19 That's why we've been successful, in that we
20 have, and I could say, crack the code, but, we have
21 figured out exactly what it is they want at each one
22 of those agencies.

23 Even though they differ, and each have their
24 own plate that we pull from, to put their template
25 together, to satisfy, whether it's State University

1 Construction Fund or OGS or DASNY, they all get a
2 different plate because they are all completely
3 different.

4 Okay?

5 Put that together.

6 I even include for them, a spreadsheet that
7 shows every subcontractor proposal and vendor
8 proposal we received, and shows racks and stacks; it
9 shows which ones are MWBEs, and which ones are not.

10 And then, obviously, anybody could derive
11 that, you know, the State -- or we would not have
12 won, and the State's not willing to pay 25 percent
13 more to have MWBE participation in a particular
14 category, if that's what happens.

15 These are my observations about the current
16 program:

17 30 percent, you guys have already heard it,
18 the state's too large, too diverse, for one size
19 fits all.

20 The current program, as it's set up, as far
21 as utilization of these organizations, puts all the
22 responsibility to perform, and the capability -- for
23 performance capability of the MWBE, squarely on us,
24 the contractor's shoulders.

25 You guys bear no responsibility whatsoever

1 for their performance.

2 Only responsibility you guys have taken is
3 the fact that somebody has said, or has not said,
4 that you are -- you fit into that category.

5 That's all you've done.

6 You take no responsibility for their
7 performance.

8 As a matter of fact, the dormitory authority
9 now has a form that we have to sign, that says that
10 we understand, we, and we alone, are responsible for
11 the performance of the MWBEs, and that they accept
12 no responsibility for their performance.

13 A little bit of a cop-out, really, if you
14 think about it. Right?

15 But you said I had to use them, yes, but
16 they're yours.

17 Some MWBEs, unfortunately, not all, not a
18 lot, but they do believe that regard -- usually the
19 new ones, think that, regardless of the price, we
20 have no choice, we have to use them.

21 Those -- that kind of attitude usually puts
22 them out of business pretty quick.

23 You have a program called "Bridges to
24 Success."

25 Sorry to say, it's funded by Empire State

1 Development. Sounds like a good idea.

2 But the terms that the Bank of America want
3 the prime contractor to sign are totally
4 unacceptable.

5 It's a bad idea.

6 Our attorney, our bonding agent, and even a
7 representative from the State University
8 Construction Fund, said, Do not sign that.

9 Okay?

10 You cannot subordinate responsibility to the
11 bank.

12 I have to say, the Empire State Development,
13 Division of Minority and Women's Business
14 Enterprises, has done a very good job in the last
15 couple of years of weeding out the
16 not-really-so-qualified companies.

17 And there certainly were some from day one --
18 you know, that were leftover from day one.

19 And then holding, you know, a pretty good
20 hard line on certification of new applicants.

21 Yeah, there's no doubt, you know, maybe in
22 that tightening up, maybe they're getting a little
23 too much. But, they have actually tightened up on
24 some that really probably deserve it.

25 Unfortunately, that purge cost me about

1 15 percent of my go-to WMBE (sic) vendors, so, there
2 you go.

3 So it's probably gonna -- my numbers are
4 going to have to come down, because those were some
5 of the people I would go to.

6 There was a question earlier, Senator, about
7 what is this costing you, New York State?

8 About 3 percent.

9 That's what we put on you, 3 percent.

10 You want a 30 percent program, you pay
11 3 percent.

12 Okay? That's the number.

13 We would like -- we use MWBE firms on all of
14 our projects, private and public, even school, SED
15 projects, which is, as you know, there is no mandate
16 for.

17 We get absolutely no credit for that, none
18 whatsoever. We get no accolade for all the
19 utilization we do. Only ones with the mandate.

20 Just like New York State, we would prefer to
21 use the lowest responsible bidder irregardless of
22 their gender or ethic heritage.

23 Why? It's just good business.

24 I saw on the New York City Comptroller
25 website, that the comptroller reported that the

1 New York City Department of Design and Construction
2 was only able to achieve 10.5 percent MWBE
3 utilization in 2017.

4 And I got 20 percent in St. Lawrence County.

5 OFF-CAMERA SENATOR: Can you say it again?

6 BARRY SMITH: New York State City
7 Comptroller, on his website, reported, in 2017 --
8 this is the department of design and construction,
9 so, like and like -- achieved a 10.5 percent MWBE
10 utilization rate.

11 OFF-CAMERA SENATOR: You got a problem
12 (inaudible).

13 BARRY SMITH: You got a problem, yeah.

14 And I won't -- well, okay (indiscernible).

15 If there's a problem, maybe your focus should
16 not be in the North Country, because that's -- we're
17 not the problem.

18 We're not the problem.

19 By hiring MWBE subcontractors to perform work
20 has resulted in a 7 percent reduction in my
21 workforce.

22 These non-hires, in four cases, layoffs, have
23 impacted North Country people.

24 This is me laying off people so that I could
25 buy out an MWBE to perform work we're capable of

1 performing.

2 Okay?

3 Senator Ritchie certainly knows that every
4 single job in St. Lawrence County is precious.

5 Okay?

6 You know, that's one of things that we lead
7 New York State in, and we're not very proud of, and
8 that's our unemployment rate.

9 Service-disabled-owned veteran businesses are
10 not included within this umbrella.

11 I understand they are their own, but they're
12 not included in this umbrella.

13 In my opinion, this group has earned special
14 consideration for opportunities in New York State
15 contracting.

16 Watertown, New York, is home to the
17 10th Mountain Division, which has sent more soldiers
18 to the war zone over the last 16 years than any
19 other U.S. Army unit.

20 No other unit has sacrificed as much as the
21 men and women of the 10th Mountain Division.

22 These wounded warriors that stay in New York,
23 and start a business, have earned our special
24 attention.

25 So I understand you guys would like some

1 thoughts on improvements.

2 Include service-disabled veterans on at least
3 an equal par, equal footing.

4 Okay?

5 Create regions.

6 I know we talked about regions in the state,
7 and base your goals on the demographics.

8 These are not all inclusive. These are all
9 individual options of themselves. Okay?

10 I'll just give you an example, Senator,
11 because you said earlier that you thought regions
12 would be difficult.

13 OGS already has, DASNY has, regions -- the
14 State divided up in regions, six or seven -- that
15 they assign -- or, they award one- to five-year
16 maintenance contracts.

17 They have a contractor assigned. It's like a
18 job-order contract. Right?

19 If you kind of look at that map, that map's
20 not too-- that's not a bad start.

21 So if you put pegs where the minority- and
22 women-business entity businesses are, even if you
23 were to say, red, you're in that zone; yellow, it's
24 a neighboring zone; it's not a very difficult map --
25 algorithm map, actually, to come up with a legit

1 number.

2 Rigorously enforce the requirement under
3 Article 15-A in the executive order, that the goals
4 adopted by state agencies should be narrowly
5 tailored to each project based on the location and
6 availability of MWBEs.

7 Got to stop 30 percent blanket.

8 My understanding is, that's already in the
9 executive order; that that's an obligation of the
10 state agency to tailor each project to its
11 situation.

12 Share some of the responsibility for these
13 businesses with the prime contractor.

14 New York State should take responsibility for
15 actually developing their skills, and assessing, and
16 assisting them with available resources, to be
17 competitive on their own merit.

18 The money saved on contract costs could go
19 directly to self-development programs.

20 Create a State-guaranteed payment plan for
21 MWBEs.

22 Quite often, young and new MWBEs find cash
23 flow is an issue.

24 Just to give you an idea of how cash flow
25 works, subordinate to me:

1 I work for 30 days, I bill state agency.
2 State agency takes -- has 30 days to pay me.
3 Guess how many days they take?
4 30 days.
5 Okay?
6 So my subcontractor/my MWBE new struggling
7 subcontractor, which I'm trying to help, I have to
8 float them cash.
9 Do you see what I mean?
10 Contractually, they don't get paid until
11 I get paid.
12 I have seven days to pay them.
13 So you do that math.
14 If they worked in that first week, they are
15 already 67 days out from having bills.
16 So in order for that to work, and that's one
17 of the reasons why I think we have good utilization
18 participation, is we float money to our subs that
19 help us in this area.
20 So talk about bank?
21 It's the Bank of Northern Tier Contracting,
22 in some cases, because, otherwise, I wouldn't make
23 it, because nobody can float on that.
24 If you guys were able to provide them the
25 funding that they would need, so they could buy

1 their materials, because no supplier is going to be
2 beyond net 30, they probably would be better off.

3 Okay?

4 And then create a mentorship program.

5 Volunteer prime contractors -- sign me up --
6 could be assigned an MWBE for skilled development,
7 again, so that they would eventually be, stand on
8 their own merit.

9 So, finally, I'd offer this one opinion:

10 I recommend that you discontinue, totally,
11 the utilization-goal program in construction
12 altogether.

13 Selecting contractors and vendors based on
14 gender and ethnic background is wrong.

15 The fact that you yourselves do not select
16 contractors that way, but you require me to do it,
17 is problematic.

18 We are not sexist and we're not bigots.

19 We're business people that would like the
20 opportunity to bid projects in a fair manner,
21 providing the highest quality work at the lowest
22 possible price.

23 We want to provide all our subcontractors and
24 vendors the same fair opportunity to compete for
25 work by selecting the lowest responsible bidder

1 without consideration of gender or ethnic
2 background.

3 It's just the right thing to do.

4 I appreciate your time.

5 SENATOR AKSHAR: Thank you, Mr. Smith.

6 BARRY SMITH: You're welcome.

7 SENATOR AKSHAR: Senator Ritchie.

8 Senator Sanders.

9 SENATOR SANDERS: Food for thought; lots of
10 food for thought.

11 I'll hold my point to the end, although I'm
12 going to speak, based on what I've learned from
13 these people.

14 SENATOR AKSHAR: Okay.

15 Thank you all very much.

16 SENATOR O'MARA: I would just add, Barry,
17 thanks for the shout-out and respect for the
18 10th Mountain Division.

19 SENATOR SANDERS: Can I get a copy of that,
20 Mr. Smith?

21 BARRY SMITH: I believe (indicating) --

22 SENATOR SANDERS: It's in there?

23 Okay.

24 BARRY SMITH: If not, I will provide it.

25

1 SENATOR AKSHAR: Okay. Our last two folks to
2 provide testimony, Eric Pond and Pat Scordo.

3 Thank you both for being with us.

4 And, sir, please, you can start.

5 PATRICK SCORDO: Good afternoon.

6 Thank you, Senators, for allowing me to
7 speak. I will be brief.

8 My name is Pat Scordo. I am the director of
9 engineering, and the president, of GYMO
10 Architecture, Engineering, and Land Surveying, right
11 here in Watertown.

12 We are a 40-person architecture, engineering,
13 and land surveying, and environmental, firm. We
14 predominately work in Jefferson, St. Lewis, and
15 Lewis counties.

16 Quite a bit different spin from what you've
17 been hearing all morning.

18 We're consultants, designers, much like
19 Eric's firm. And I'm sure maybe we'll have similar
20 comments or questions.

21 A little bit of background of our firm:

22 A wide array of work we do, probably
23 50/50 split between municipal, private-sector work,
24 anything from a 2,000-square-foot credit union, or
25 small convenient store. We'll design to 400-unit

1 apartment complex, senior living communities,
2 churches.

3 Really, whatever appeals to us that works
4 within our ranks, we'll try to tackle the project.

5 One of the most recent projects we completed
6 was in the village of La Valle. It's about to go to
7 construction.

8 A little bit out of the norm for this size,
9 but it's a 15 million site infrastructure project,
10 with sewer, water, drainage, roads, curbs;
11 basically, everything from sidewalk to sidewalk.

12 My comments are going to be a little bit of
13 comments, but also some questions where I'm looking
14 for a little bit of feedback.

15 And like I mentioned, it's going to be a
16 little different spin from what you've been hearing,
17 but I think the commonalities are there as well.

18 What we generally do is bid against other AE
19 firms, especially for the municipal-type work. Some
20 of these firms may be MWBE firms, but not all of
21 them.

22 One of the concerns we have is that the firms
23 having to hire MBE firms because of the goals that
24 need to be met, anywhere from 23 to 30 percent.

25 In most cases, we're capable of providing

1 this work through the professionals that we have.

2 But once we're awarded a job, we understand
3 we need to meet these goals, which are, we view them
4 as requirements.

5 So that's what we do, and that's what we
6 usually -- actually, that's what we always do.

7 My first comment/question is maybe a
8 clarification, but, one of the things that comes up
9 often with myself and our colleagues, is an
10 understanding that there's an "umbrella"
11 designation.

12 Specifically what I mean by that is, a
13 multi-disciplined professional firm, such as
14 ourselves, but, that's not the case, but a
15 four-facet firm, such as us, benefiting from an MWBE
16 status, when only maybe one discipline within that
17 firm is an MWBE.

18 For example, a firm that practices
19 engineering, surveying, and architecture, is
20 woman-owned, she's an engineer; however, the
21 architects and the surveyors get to benefit, or be
22 capable of performing the MWBE work.

23 Another one, kind of related to that comment,
24 is I was always never sure if the MWBE-designated
25 was meant -- designation was meant for established

1 professional firms.

2 In other words, I understood it to be a
3 start-up, if you will, opportunities for MWBEs;
4 not where there's a firm already established,
5 practicing maybe the same disciplines we are, but,
6 suddenly, a woman engineer or surveyor comes on
7 board. The firm makes her, or them, if it's
8 minority, a 51 percent owner. Now they're capable
9 of providing MWBE work, which kind of puts a temper
10 on our work and our ability to be successful up here
11 in the North Country.

12 I thought there was always a time frame,
13 again, for start-up of these firms, because that's
14 what I understood it to be: It was a mechanism that
15 the State developed so a minority or a woman could
16 start an engineering or a surveyor or an
17 architecture firm.

18 But after years, once you're established,
19 once you're making money, once you're profitable,
20 once you're billable, that designation goes away.

21 And I have not seen that.

22 What we are seeing -- sorry.

23 What we are seeing is the percentages or
24 requirements will use 23 percent, but I understand
25 it's going to 30 for professional firms. But

1 there's not 23 to 30 percent capable MWBE firms that
2 can do that work, especially in our region.

3 Maybe I'm biased, but I'm not necessarily
4 interested in feeding my local competition MWBE work
5 that my firm's capable of doing.

6 So what we do is, we go out of the region,
7 and because we're out of the region, you've heard it
8 earlier, the costs go up.

9 And we've seen 15 to 20 percent cost
10 increases when we're required to meet our quota and
11 bring firms outside of the North Country area into
12 this area to do work that we're capable of doing.

13 And, frankly, we often don't scrutinize the
14 fee.

15 If they come back with a proposal, we're so
16 set on meeting the requirement, that, often, we hire
17 them to meet that goal so we can submit and meet the
18 23 percent requirement.

19 That's maybe not the typical way to do it,
20 but it's a streamline, and it works, and fulfills
21 the requirement.

22 That's it.

23 Thank you.

24 SENATOR AKSHAR: Thank you.

25 Mr. Pond.

1 ERIC POND: Yeah, thank you very much.

2 Eric Pond. I'm a senior vice president with
3 Barton and Logudice.

4 We're a Syracuse-based firm, with 11 offices
5 throughout New York State. Five years ago we opened
6 up an office in Watertown.

7 We've been doing North Country work for years
8 and years and years. Finally got to the point where
9 it made sense to open an office.

10 I'm happy to say that we've grown out of our
11 space, and we're expanding. I'm doing a very large
12 expansion, taking over the entire first floor of
13 the -- well, hopefully, soon, the Barton and
14 Logudice Building, downtown Watertown.

15 So business is good, and I thank you for
16 supporting infrastructure in New York State.

17 We understand you got to take the bitter with
18 the sweet sometimes.

19 There's a lot of funding out there. There's
20 a lot of good projects.

21 And, this M- and WBE (sic) program is not a
22 new program.

23 I started at Barton and Logudice over
24 20 years ago, and, the very first projects I worked
25 on had M- and WBE (sic) requirements, and I've been

1 dealing with M- and WBE (sic) for a long time.

2 The requirements have steadily increased over
3 time, and that has allowed us to acclimate to those
4 increasing requirements, which is good.

5 You know, engineers don't like change. It
6 takes us a while to acclimate, and -- and we do.
7 But I do see some problems and some challenges.

8 And, Senator Little, you touched on it: It's
9 that "value" piece.

10 And there's a lot of portions of the program
11 that I just -- you know, I question if it's
12 providing value to the taxpayers at times, just
13 because of the practical reality of how we're
14 executing things, and just like Patrick said, going
15 out of the area to meet the requirements.

16 So, again, you know, it was kind of
17 interesting, back in the early 1970s, Barton and
18 Logudice designed the waste-water treatment plant in
19 Potsdam, New York.

20 And we worked -- we teamed with a local
21 engineering firm in Canton, that is still in
22 business today.

23 So fast-forward to 2016, we're doing the
24 redesign. The plant's wore out, it needs to be
25 upgraded.

1 We're doing the redesign of that plant.

2 That firm is still in existence in Canton.

3 You know, do you think I thought of
4 partnering with that firm to do the upgrade?

5 Absolutely not.

6 They're not an M- or WBE. You know, didn't
7 even -- I thought, that would be really nice, but
8 I can't do it.

9 Just like I can't partner with Patrick on
10 projects because I'm shooting myself in the foot.
11 I can't -- I can't work with his firm because he's
12 not an W -- M- or WBE.

13 Okay?

14 So it's tough.

15 I'm doing a very large water project in the
16 town of Pamelaia.

17 The survey firm in the town of Pamelaia is in
18 the adjacent town, that's done all the survey for
19 all the water districts in the town of Pamelaia for
20 years and years and years.

21 Do you think I can use that (indiscernible)
22 firm?

23 No. They're not an M- or WBE.

24 So, I'd be shooting myself in the foot.

25 I can't do that.

1 I got to hire that out from somewhere else.

2 Back when the firm -- back when the
3 percentages were about 10 percent, no problem.
4 Survey, archeological, soil borings, not a problem
5 meeting some 10 percent.

6 A little bit of a stretch meeting 20 percent.

7 But, we're engineers, we like challenge; we
8 can do that.

9 30 percent?

10 We have to be very, very creative.

11 And it's, unfortunately, maybe not very
12 efficient, and not very efficient use of taxpayer
13 dollars.

14 So that -- you know, because, at 30 percent,
15 we're eroding core services that we provide.

16 It used to be, we used to inspect all the
17 projects that we designed.

18 So, now, we have to lay off inspectors.

19 I have one inspector from Cape Vincent, been
20 with us for over 20 years.

21 I had to lay him off, and say, Joe, you need
22 to go work for this Rochester-based MBE firm, which
23 he did.

24 And we have him back on another project.
25 He's still working for us, but, not really.

1 So it's going through a lot of overhead and
2 layers to get the same thing. That just balloons
3 costs.

4 You know, it's overhead cost. It's markup.
5 It's engineers to manage all that.

6 So I'm not hiring inspectors anymore.

7 I'm not hiring as many entry-level
8 technicians and designers.

9 I'm hiring project managers/paper-pushers to
10 meet these program requirements, and does that
11 really add value to the project?

12 You know, not really.

13 At the end of the day, it doesn't buy a stick
14 of pipe to go in the ground.

15 You know what I mean?

16 It doesn't buy design time; people actually
17 working on the project, doing the design, meeting
18 with the clients, coming up with a creative
19 solution.

20 You know, it's pushing around paperwork,
21 meeting program requirements, which I understand,
22 that's part of the business, but a lot of time and
23 money is going toward that.

24 We have a project right in Sandy Creek. It's
25 a large capital project, and you have to understand

1 that time is money.

2 Patrick talked about the La Valle project.
3 That's a \$15 million project.

4 Sandy Creek is a \$14 million project.

5 Potsdam is a \$12 million project.

6 On a project like that, every month that goes
7 by, you're looking at about \$45,000 worth of budget
8 erosion due to inflation alone.

9 Okay, that's a lot of money, \$45,000, down
10 the toilet every month if there's a delay.

11 And, for example, with Sandy Creek, that
12 project, we needed to get soil borings done. And
13 our go-to soil-borings contractor that's been --
14 I've been working with for 20 years, he's not an
15 M- or WBE contractor.

16 He's a good -- he's a good soil-boring
17 contractor.

18 He came in \$50,000 less.

19 We couldn't use him because he wasn't M- or
20 WBE.

21 We knew, in order to get his utilization plan
22 approved -- or, our utilization plan approved, that
23 would have been months. That would have cost the
24 project even more money.

25 We had to go to the M- or WBE, even though

1 it's \$50,000 more.

2 That's really tough.

3 That same project, the surveying went to
4 New Jersey, \$250,000 that could have been done here,
5 locally. Central New York-based, northern
6 New York-based surveyor, that went to a
7 New Jersey-based firm.

8 So that doesn't help -- that doesn't help the
9 North Country.

10 So, you know, there's just a lot of things.

11 I understand the program, we're adapting to
12 the program. We're fine; B&L is fine.

13 Sometimes, you know, I've heard a lot of
14 comments about cash flow, and floating -- floating
15 the small contractors, floating the M- and WBE
16 contractors, or any other small subconsultants that
17 we hire.

18 We always joke that "B&L" stands for banking
19 and loan, because of the practical reality of it;
20 that these vendors need to get paid, or else they're
21 out of business.

22 I do agree that they're stated as "goals,"
23 but they're really requirements, because if you
24 don't comply, then it's delay, delay, delay.

25 That costs the project money. That costs the

1 taxpayers money. We can't execute the project.

2 So, they may be goals, but we act as if
3 they're requirements.

4 The waiver process is punitive, because it
5 just takes a long time.

6 You'll get a waiver, eventually. It just
7 takes a very, very long time. They make it
8 difficult.

9 And there is a lot of times that, you know,
10 we do have to reach into our core services.

11 We'll do ecology work. We do wetlands work,
12 inspection, and all that. We'll sub that out, and,
13 quite often, we have to redo that; we have to redo
14 the work just because the quality isn't there.

15 We'll get regulators that say, Did you do
16 this? Did you do that? Well, this is a B&L job,
17 you always do this, you always do that.

18 I was, like, Well, we subbed that portion of
19 the work this time.

20 So -- you know, so we have to -- we have to
21 redo it.

22 But it is tough, and I think it does provide
23 for some inefficiencies, and this market just
24 doesn't have the subcontracting capacity to do it
25 all in-house.

1 We can get it done, but work is going out of
2 the area, and more and more time, money, and effort
3 is spent on stuff other than construction and
4 engineering.

5 It's programmatic requirements and
6 compliance.

7 So that's all I have.

8 SENATOR AKSHAR: Senator Ritchie.

9 SENATOR RITCHIE: I have nothing.

10 SENATOR AKSHAR: My colleagues to the left,
11 not politically?

12 To the right?

13 SENATOR SANDERS: Don't put me on the right.

14 [Laughter.]

15 SENATOR AKSHAR: We'll bring you over --

16 SENATOR SANDERS: Although my colleagues
17 accuse me of shifting.

18 I have some points.

19 Exactly.

20 The question, I was going to raise it,
21 Mr. Scordo: What is Croson? What is the Croson
22 decision; what is this thing that time we speak of?

23 And implicit in the program, in the Croson
24 decision, is the idea that you grow out of it; that
25 it is not maintained for life; that when you reach

1 to a certain level, you don't need it anymore.

2 And I was -- we've come to the same point,
3 sir, because I was going to raise it, that if you
4 don't have any cutoff point, then you're going to
5 start bumping into other firms.

6 You're going to start bumping into the
7 GYMOs of the world, who, while they may be
8 supportive of fairness, may make an argument that
9 this is unfair; that we've gone from there to
10 becoming point of unfair.

11 And it's tied to a question of assets, but
12 not beholden in the sense that, it's more a question
13 of disparity.

14 Is there -- do you -- are there companies
15 here, and they're not being used?

16 That's the disparity.

17 If there -- there's an availability --
18 imagine if there were some, I don't know, the
19 James Sanders Engineering Firm, and James Sanders
20 just couldn't get on first base in Watertown.

21 I know that that would never happen here,
22 but, if there were, an argument could be made, under
23 certain circumstances, for disparity.

24 All right.

25 However, if there was a James Sanders

1 Engineering Firm, and I had, you know, 10 times
2 whatever the GYMO has, and we're getting as many
3 contracts, then that should not be part of the
4 disparity program.

5 So there's -- you have a certain argument
6 there, that we have to be aware of; that in our
7 attempt to be fair, that we don't become unfair to
8 other companies.

9 It's an interesting balance that we will have
10 to do.

11 Mr. Smith's idea may be an interesting one.

12 I don't know how we can do it, but he says
13 that he was able to -- he includes MWBEs on even
14 his private work.

15 That may be, you know, we shouldn't simply
16 beat people up for not doing. We should reward
17 people for doing.

18 You know, we've got to figure out the right
19 balance, and that may be a wise thing that we
20 explore in the days to come.

21 Now, one of the things, the elephant in the
22 room, that we really don't want to grapple with, is
23 the question of the sins of the fathers, if you
24 wish.

25 Now, I'm willing to say that everybody in

1 this room, this room, is free and fair, and would,
2 you know, hire anybody based on the ability to do
3 work.

4 However, outside of this room, there are
5 those who are not as enlightened.

6 So you got to figure out the proper balance,
7 where we enlighten the unenlightened without
8 penalizing the folk who are in this room, and rooms
9 like this, because the -- one of the problems that
10 you're describing is the abnormality of capitalism.

11 If you're telling me that there's plenty of
12 business and plenty of money to be made, and yet
13 people are not descending on these areas, I'm going
14 to tell you that that's against the law of
15 capitalism.

16 That capitalism says, that where there's a
17 profit to be made, people will go and try to make a
18 profit.

19 And if they're not doing that, either they
20 don't know about it, or, you know, there are some,
21 perhaps, benign reasons. But, we've got to look at
22 this a little bit more, or there are impediments.

23 There's something stopping that, and that's
24 why the program is needed.

25 But it, certainly, you made the argument,

1 and, your Chairs, of -- let's be clear: Your Chairs
2 have been making a strong argument in Albany, and
3 other places, for quite the while, that we need to
4 look at this.

5 And I am here.

6 You may not have ever seen one, but I'm a
7 Democrat.

8 Yes.

9 No, it's true, they exist.

10 And I am here to -- to -- to follow the lead
11 of these good people, and to say, Okay. Let's be
12 bolder now. Let's think totally out of the box.
13 Let's not be captive to parties.

14 Let's imagine that the people in this room,
15 as good Americans as the people in Brooklyn, or
16 other places -- I'm not from Brooklyn, mind you --
17 as other places, if that's the case, then we should
18 listen to them too, and we should hear what they're
19 saying, and see what we can do to come up with
20 something that will make a better New York.

21 And I'm glad to hear these things.

22 And I'm very glad --

23 That's called a "transition," I'm about to
24 hand it back. You can stop kicking me under the
25 table.

1 -- I'm glad --

2 She didn't kick me under the table, my
3 friends.

4 -- I'm glad that you're doing this.

5 And I will join you at the different parts of
6 New York State, if the good Lord allows, and the
7 people of my district put up with me; I'll be glad
8 to.

9 Thank you for this. I've learned a great
10 deal.

11 And thank you for your testimony.

12 SENATOR AKSHAR: Senator Sanders, thank you.
13 Senator Little?

14 SENATOR LITTLE: Thank you.

15 I would just like to say that I really
16 commend my colleague on my left, that he came up
17 here, because seeing is believing, and you can
18 really begin to understand what we have been trying
19 to get more of your colleagues to understand, that
20 there are issues, and there are things we would like
21 to do, but we can't do because of circumstances.

22 So I'd also like to say that I just
23 appreciate everyone who came, and the Chairmen for
24 putting this together.

25 But, so many issues that we have talked about

1 for a long time are really coming to the forefront.

2 And one of the things you said, about having
3 an engineer go work for an MWOB, and then you hire
4 them, I have companies, big companies, and they try
5 to have, maybe their children or their associates,
6 start another company and be an MWOB; that they know
7 the people, they know the training, they know
8 they'll do a good job, and now they can hire them,
9 because they get certified.

10 But they can't get certified because they
11 find a connection to the parent company, and they
12 say, Oh, no, they're not an independent MWOB.

13 That's not the case.

14 There are two young women, daughters of two
15 owners, setting up a different type of business, but
16 using -- to get started, using office space that
17 their fathers own.

18 They got thrown out.

19 So, so many things.

20 We need more people in Albany, you touched on
21 that, helping us get through the process, helping
22 people get certified.

23 We have more certification, we have more
24 supply, more, everything.

25 So, a lot went on here today, and I really

1 appreciate everybody was here.

2 I've learned a lot.

3 SENATOR AKSHAR: Great.

4 Senator Hannon.

5 SENATOR HANNON: Yes.

6 First of all, thanks for having the hearing.

7 And I have a little familiarity with the
8 problems that you face as engineers, because we
9 appropriated \$2 1/2 billion last year for water
10 throughout the state, and we've been able -- yeah,
11 I know, yes.

12 And we know we got a lot more to do, and
13 there's a lot of engineers who are very good at what
14 they do.

15 But I'm more intrigued by the problems that
16 Holly House raised, because the mechanics of how one
17 goes through this system and gets to be certified,
18 or, whatever, approved, seems to be more daunting,
19 almost a foundation that needs to be addressed and
20 made more fair, because there's a lot more things
21 that have to happen.

22 I sponsored the increase -- substantial
23 increase in the bonding authority of DASNY this
24 year, so we're going to go forward.

25 But what are those mechanics?

1 How do we get people qualified?

2 The points that Senator Little raised about,
3 is it automatically suspicious, or is there some
4 other test?

5 And unless we address that, we're just going
6 shoot ourselves in the foot.

7 Yes, it costs you money if you go out, but,
8 you know, if it's not somebody right from
9 Lewis County, and it's from somebody from
10 Essex County, is that going out of the area?

11 I don't know.

12 But if you can't get anybody at all, what is
13 the problem there?

14 So, I've heard from Senator Akshar and
15 Senator Ritchie before these problems.

16 I'm glad to here, hear directly from you, as
17 to where we have to go.

18 And I thank you for having the hearing.

19 SENATOR AKSHAR: Great. Thank you.

20 I'd just offer a couple of thoughts, and then
21 I'll turn it over to our gracious host.

22 I want to thank Senator Flanagan, of course,
23 for allowing this issue to remain at the forefront
24 of our priorities, moving forward.

25 I think, collectively, regardless of whether

1 we are Republicans or Democrats, we want to make
2 New York as affordable as we possibly can; ensure
3 that there are opportunities for all.

4 And, you know, I think we heard a lot of good
5 testimony today.

6 We hear recurring themes, regardless of where
7 we are.

8 I think, my gut tells me, we will continue to
9 hear recurring themes on this particular issue.

10 We're going to continue to have the hearings.

11 I would respectfully say to the Governor and
12 the state agencies, that there is nothing nefarious
13 going on here.

14 We're trying to address this in a bipartisan
15 fashion, so the invite remains open.

16 Please come to the table; please come and
17 offer your suggestions on how we make this better,
18 because, if we want to extend the program at the end
19 of this year cycle that we have, it would be to
20 everyone's benefit if you actually showed up and had
21 a conversation with us.

22 You know, I am troubled by -- in a couple
23 of -- in a couple of areas.

24 I'm trouble -- I'm troubled to continuously
25 learn about the increase in project costs --

1 taxpayer dollars again -- an increase in project
2 costs, simply to comply with -- with this particular
3 program.

4 And, the fact that we're sending work, not
5 only out of regions, but out of the state, simply to
6 comply with this program, I think is highly
7 problematic.

8 So, you know, those are two areas that I'm
9 focused in on.

10 And, Senator Sanders, again, I began my
11 comments in saying this, I'm going to say it again:
12 I want to thank you for being part and parcel to
13 this discussion.

14 I thank the Minority Leader as well for
15 allowing this to happen.

16 Right?

17 All of this takes conversation.

18 And I'm pleased that you're at the table with
19 us.

20 I think you -- again, you bring a wealth of
21 knowledge on this subject to the table.

22 And I firmly believe that, at the end of the
23 day, we will advance a piece of legislation; advance
24 things to change this program for the better.

25 So, Senator, thank you.

1 Senator Ritchie, of course, thank you for
2 having us.

3 SENATOR RITCHIE: You're welcome.

4 SENATOR SANDERS: I, too, want to thank the
5 Minority Leader, who understands that this is a
6 critical issue, and sent me up here to see this
7 issue through.

8 We do understand that we really have to
9 figure a way to aid the good people of the
10 North Country to aid themselves; to do everything
11 that we can to understand that there's one New York.

12 And whether we speak of MWBE, or any other
13 economic-development vehicle, that we stand willing
14 to be a partner, and I want do that physically.

15 Thank you.

16 SENATOR RITCHIE: And would I like to thank
17 all of you for coming out today for this hearing.

18 It's great to be home in the beautiful
19 North Country.

20 I know there are many other things that you
21 could do on this beautiful July day; so thank you
22 for your time.

23 You -- Senator Akshar, he has reiterated the
24 same concerns that I have.

25 First of all, sending work out of this area.

1 You know, we have a somewhat
2 economically-challenged district that I represent.
3 And anytime a job goes out of the area, it's a
4 concern for me.

5 So that, first and foremost, is, you know, at
6 the top of my priority list.

7 And, that, along with costing taxpayers extra
8 money.

9 We don't have a lot of extra money up here.

10 And when jobs are \$45,000 extra because
11 they're being delayed, that's unacceptable.

12 So I think, at the state level, it would be,
13 I think, helpful if the agencies did show up, so we
14 could all work together to make the program better
15 and address some of these issues.

16 And for my colleagues, I want to thank you
17 for coming up.

18 And to give Senator Sanders an extra
19 shout-out for being willing to work across party
20 lines, and making the big trip to the North Country
21 from New York City, to hear firsthand the concerns
22 that we've been talking about over the last few
23 months.

24 And I'm sure it's very much appreciated by
25 everybody who attended today.

1 So, with that, thank you.

2 SENATOR SANDERS: Watertown treated me very
3 well, I should say.

4 SENATOR RITCHIE: Glad to hear it.

5 Thank you, everyone.

6 SENATOR AKSHAR: Thank you.

7

8 (Whereupon, at approximately 1:36 p.m.,
9 the joint-committee public hearing held before the
10 New York State Senate Standing Committee on Labor
11 and the Senate Standing Committee on Economic
12 Development concluded, and adjourned.)

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