JOINT HEARING BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON LABOR
AND
STANDING COMMITTEE ON ECONOMIC DEVELOPMENT

PUBLIC HEARING:

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

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

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

PRESIDING:

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

Senator Phil Boyle
Chairman
NYS Senate Standing Committee on Economic Development

Senator Patty Ritchie, Sponsor

CO-SPONSORS PRESENT:

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

ALSO PRESENT:

Senator James Sanders, Jr.

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John T. Evers Director of Governmental Affairs The Business Council	143	152
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SENATOR RITCHIE: I want to thank everyone for coming out today and taking their time to come and testify.

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

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

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

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

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

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

That is something that I was hoping to hear

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

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

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

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

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

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

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

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

this program.

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

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

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

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

Senator Kennedy.

SENATOR KENNEDY: Thank you, Chairman.

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

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

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

underrepresented and underutilized.

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

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

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

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

Thank you.

SENATOR AKSHAR: Thank you, Senator Kennedy.

Senator Phillips.

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

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

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

SENATOR AKSHAR: Thank you.

Senator Helming.

SENATOR HELMING: Thank you, and good morning.

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

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

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

I look forward to the testimony today.

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

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

SENATOR AKSHAR: Thank you, Senator Helming.

Senator Little.

SENATOR LITTLE: Thank you, and good morning.

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

Thank you.

SENATOR AKSHAR: Wonderful.

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

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

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

Mike, however you can choose to do it.

Thank you for being with us.

MIKE ELMENDORF: I will not deliver all 67 pages.

[Laughter.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It's about remediation.

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

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

We stand against discrimination in all forms.

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

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

And that word is important: Goals.

"Goals" is an important word.

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

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

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

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

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

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

But the problems don't end there.

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

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

That's not how this works.

The law, the regulations, are very clear.

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

established.

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

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

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

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

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

Couple of examples.

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

Good morning, Senator Sanders.

SENATOR SANDERS: Good morning.

MIKE ELMENDORF: Good to see you, my friend.

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

So we asked them, please send us the analysis

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

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

That's a big difference.

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

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

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

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

May not seem like a big difference.

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

Well, why is this happening?

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

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

gotten permission from the Governor's Office. There's a special e-mail address set up in there where they have to send a request and documentation for permission to put out a goal under 30 percent.

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

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

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

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

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

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

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

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

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

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

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

There's a chart in my written testimony.

-- waivers shot way up.

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

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

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

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

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

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

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

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

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

In fact, that number is not correct.

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

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

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

You've all gotten these?

-- that had a 6 percent response rate.

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

We get more than a 6 percent response rate.

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

So the 2016 study is fundamentally flawed.

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

15-A is an important program.

This program is an important program.

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

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

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

They did the right thing for our industry,

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

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

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

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

Extend the law, which the Legislature did.

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

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

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

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

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

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

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

There aren't enough people.

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

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

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

to try to duplicate around the state.

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

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

That's where our focus should be.

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

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

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

But let's take a broader view.

Let's follow the law.

Let's follow the constitution.

Let's fix 15-A in New York.

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

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

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

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

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

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

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

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

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

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

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

travel with us.

So, I thank you for that.

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

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

SENATOR AKSHAR: Sure. Go ahead, Senator.

SENATOR SANDERS: Oh, thank you, thank you.

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

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

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

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

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

But here you actually had something, and

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

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

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

MIKE ELMENDORF: Likewise.

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

MIKE ELMENDORF: I live here.

SENATOR SANDERS: Well --

MIKE ELMENDORF: People actually live here.

[Laughter.]

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

MIKE ELMENDORF: I do plenty of that too.

[Laughter.]

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

[Laughter.]

MIKE ELMENDORF: I take that as a compliment?

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

[Laughter.]

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

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

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

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

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

A goal of 30 percent.

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

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

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

What about women?

What about White women up there?

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

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

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

SENATOR SANDERS: Yes.

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

SENATOR SANDERS: Probably 50/50.

MIKE ELMENDORF: Maybe.

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

SENATOR SANDERS: Yes.

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

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

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

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

SENATOR SANDERS: But this is not happening.

MIKE ELMENDORF: Well, certainly it's happening.

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

SENATOR SANDERS: Explain the 70 percent.

MIKE ELMENDORF: -- in New York.

SENATOR SANDERS: Explain the 70 percent.

MIKE ELMENDORF: The 70 percent?

SENATOR SANDERS: Yes.

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

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

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

I mean --

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

I haven't seen those facts.

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

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

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

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

[Laughter.]

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

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

And the same is true for WBEs.

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

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

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

There's nothing else involved.

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

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

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

Zero.

The contract came up with a 30 percent goal.

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

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

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

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

The capacity there is hard zero.

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

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

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

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

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

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

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

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

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

And the last point I'd leave you with,

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

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

SENATOR SANDERS: Oh, then I'm wrong.

[Laughter.]

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

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

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

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

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

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

the capacity.

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

It's real work.

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

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

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

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

But they're violating narrow tailoring too.

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

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

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

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

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

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

He looks younger than he is, I suppose.

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

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

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

it must be.

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

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

MIKE ELMENDORF: I think just about everywhere.

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

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

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

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

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

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

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

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

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

That's not what anybody here wants.

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

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

I want to give you a little homework, though.

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

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

SENATOR SANDERS: Okay.

MIKE ELMENDORF: -- until the ESD operations

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

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

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

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

SENATOR SANDERS: Well, I thank you.

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

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

But, thank you very much for the opportunity.

SENATOR AKSHAR: Senator Ritchie.

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

Just like Senator Helming, on a, pretty much,

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

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

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

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

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

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

certification was taken away.

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

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

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

So, I appreciate you being here.

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

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

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

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

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

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

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

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

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

Well, I've got bad news.

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

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

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

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

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

This is a waste of everybody's time.

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

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

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

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

Well, that's not how it works anymore.

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

And I talked about the trend on waivers.

Well, there's a couple of interesting things.

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

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

W's throughout the course of the project.

Well, that may not be realistic. Right?

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

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

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

Well, why is this?

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

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

The other thing that was really disturbing

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

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

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

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

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

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

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

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

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

SENATOR RITCHIE: Thank you.

SENATOR AKSHAR: Senator Boyle.

SENATOR BOYLE: Thank you.

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

MIKE ELMENDORF: Thank you.

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

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

I hear it all the time in our office:

We went through the paperwork, we tried, and

forget it.

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

You know?

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

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

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

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

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

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

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

So this is going to make it more difficult.

I do have one question, though.

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

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

I mean, would that count towards the 30 percent?

MIKE ELMENDORF: Well, for the agency, yes.

SENATOR BOYLE: Yeah.

MIKE ELMENDORF: So the goals apply to procurements broadly.

SENATOR BOYLE: Right, right, yeah.

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

SENATOR BOYLE: Yeah.

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

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

SENATOR BOYLE: Uh-huh?

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

SENATOR BOYLE: Yeah, yeah, yeah.

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

SENATOR BOYLE: Yeah, yeah.

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

SENATOR BOYLE: Right.

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

SENATOR BOYLE: Yep.

MIKE ELMENDORF: -- for our industry.

And, our industry is different.

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

You can't build something from afar.

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

SENATOR BOYLE: Right.

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

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

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

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

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

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

SENATOR BOYLE: Right.

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

Your goal should be 30 percent.

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

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

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

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

SENATOR BOYLE: Right.

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

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

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

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

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

SENATOR BOYLE: Uh-huh.

MIKE ELMENDORF: And that protects everybody.

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

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

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

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

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

Transparency is a good thing.

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

SENATOR AKSHAR: I'd love to see that.

Thank you.

MIKE ELMENDORF: Certainly.

SENATOR AKSHAR: Senator Kennedy.

SENATOR KENNEDY: Thank you, Senator Akshar.

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

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

MIKE ELMENDORF: Thank you.

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

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

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

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

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

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

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

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

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

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

MIKE ELMENDORF: It was only three.

SENATOR KENNEDY: -- three hours?

MIKE ELMENDORF: Well, that one --

SENATOR KENNEDY: Three hours on one day.

Wait a minute.

Three hours one particular day.

A couple of hours with me another day.

MIKE ELMENDORF: Yes.

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

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

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

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

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

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

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

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

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

the workplace.

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

How do we get there?

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

MIKE ELMENDORF: Thank you, Senator.

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

We need a new disparity study anyway. Right?

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

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

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

What the number really is, there is questions

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

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

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

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

So I think you need a few things.

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

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

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

And we don't want to see that happen.

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

right way.

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

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

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

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

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

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

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

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

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

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

I'm surprised anyone is still here.

-- the law works.

The trouble is not the law.

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

And I guess I conclude with the 30 percent.

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

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

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

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

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

And I don't think that it is.

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

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

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

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

proposed that the Legislature adopt without really adopting it.

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

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

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

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

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

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

incorporate them into law, and continue this program.

SENATOR AKSHAR: Senator Little.

SENATOR LITTLE: Thank you.

And thank you for your remarks.

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

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

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

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

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

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

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

The difficulty of the whole waiver process takes forever.

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

Two things I would ask you:

There needs to be a more simpler certification process.

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

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

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

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

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

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

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

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

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

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

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

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

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

We hear a lot about certification.

We hear a lot about decertification.

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

And I think a couple of things are clear.

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

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

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

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

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

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

SENATOR LITTLE: Right.

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

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

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

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

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

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

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

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

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

SENATOR LITTLE: Out of the region.

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

But the more troubling thing is, that we

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

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

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

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

SENATOR LITTLE: That's a major difficulty.

MIKE ELMENDORF: And the same thing's

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

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

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

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

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

I don't understand that.

SENATOR LITTLE: Thank you.

SENATOR AKSHAR: Senator Phillips.

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

You mentioned this SUNY Canton and SUNY Long Island analysis.

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

In your professional opinion, is the analysis accurate?

Is it standardized analysis?

Is it accurate?

Does it reflect what we're looking at?

MIKE ELMENDORF: Yeah -- yes.

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

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

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

It's the same thing that Stony Brook did.

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

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

less than 12.

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

So I think the analysis makes a lot of sense.

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

Which is what that ESD --

SENATOR PHILLIPS: Is it a standardized form?

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

SENATOR PHILLIPS: Okay.

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

And, again, I understand why.

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

SENATOR PHILLIPS: And one last question.

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

You mentioned this mentor-protege program.

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

Are there any other ideas? change?

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

SENATOR PHILLIPS: Yeah.

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

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

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

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

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

We haven't seen it.

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

We haven't seen anything come of that.

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

That's where contractors come from.

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

SENATOR PHILLIPS: Thank you.

MIKE ELMENDORF: Okay.

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

SENATOR SERINO: Okay. Thank you.

And thanks, Mike, for being here.

MIKE ELMENDORF: Thank you, Senator.

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

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

Certification process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR SERINO: Right.

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

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

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

SENATOR SERINO: Uh-huh.

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

Which I guess makes more sense than doing it everywhere.

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

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

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

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

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

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

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

MIKE ELMENDORF: Yeah, that -- so --

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

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

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

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

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

SENATOR SERINO: Right?

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

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

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

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

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

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

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

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

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

SENATOR SERINO: Yes.

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

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

SENATOR SERINO: Sure.

Well, thank you; thanks, Mike.

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

SENATOR SANDERS: Absolutely.

SENATOR AKSHAR: Thank you.

Senator Helming.

SENATOR HELMING: Thank you.

SENATOR AKSHAR: Thank you.

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

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

I just quickly wanted to point out:

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

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

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

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

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

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

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

So anything we could do to simplify that.

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

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

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

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

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

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

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

And that should never happen.

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

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

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

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

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

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

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

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

SENATOR SERINO: Thank you.

SENATOR AKSHAR: Senator Sanders.

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

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

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

I did not do it alone.

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

Both of these people gave me advice.

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

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

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

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

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

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

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

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

That's a different point.

And they may accept it for many different reasons.

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

So there are reasons why things may be.

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

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

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

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

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

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

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

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

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

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

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

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

Why aren't they get paid faster?

Why is there a net worth?

Why are we doing several things?

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

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

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

In other places it may be other things.

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

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

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

That we don't have 60 percent of the

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

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

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

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

We're not there yet.

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

MIKE ELMENDORF: (Indiscernible.)

[Laughter.]

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

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

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

This is our job.

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

Thank you very much, Mr. Chair.

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

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

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

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

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

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

will be a fair place for them to come.

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

I thank you for that, sir.

SENATOR AKSHAR: And we appreciate your work on that.

Mike, thank you very much.

MIKE ELMENDORF: Thank you.

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

MIKE ELMENDORF: I hope not.

[Laughter.]

MIKE ELMENDORF: I bet you all do too.

[Laughter.]

MIKE ELMENDORF: Thank you.

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

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

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

RENEE SACKS: Okay.

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

And I -- we will consolidate.

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

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

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

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

So our focus is construction.

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

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

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

work.

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

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

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

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

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

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

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

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

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

Our women are breaking those glass ceilings.

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

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

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

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

subconsultants and architects and engineers on the projects.

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

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

So I want you to understand WBC.

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

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

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

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

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

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

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

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

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

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

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

And that's what this is about.

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

where we are.

So, I looked at some facts.

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

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

2.1 million.

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

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

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

Senator Sanders, you alluded to that fact before.

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

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

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

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

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

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

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

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

And, Senator Little, that hundred and --

SENATOR LITTLE: No, I have two economic regions.

RENEE SACKS: I know.

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

SENATOR LITTLE: I can see it. And --

RENEE SACKS: Yeah.

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

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

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

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

If you look, you find.

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

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

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

I went through the directory.

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

effort, we called over 600 electrical contractors.

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

Some of them are capable.

Some of them were union contractors, I indicated before.

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

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

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

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

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

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

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

They didn't come from Detroit.

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

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

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

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

Skanska is on our board.

Skanska is on my colleague's boards.

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

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

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

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

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

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

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

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

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

It's quite laborious.

I got a contract.

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

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

Yes?

Okay.

Because I wasn't.

I know some of them.

Some of them are smaller.

Not all of them are mega projects.

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

They also require workforce components.

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

And that is a big, big push.

There's a big drawback throughout New York

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

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

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

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

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

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

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

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

You would know better than I.

Senator Ritchie --

SENATOR AKSHAR: It's not Soaring.

RENEE SACKS: It's not Soaring.

I know, it's PR.

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

It's not Soaring for MWBs.

Is that what you meant?

SENATOR AKSHAR: Collect --

RENEE SACKS: Or it's not Soaring overall?

SENATOR AKSHAR: Yeah, collectively.

I'll let you continue.

RENEE SACKS: Collectively. Okay.

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

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

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

When a door opens up to opportunity --

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

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

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

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

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

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

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

They need to be vetted, and I recognize that.

Senators Little and Amedore, in the capital

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

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

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

Where are you?

There you are.

And there were $217 million awarded for 289 projects.

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

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

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

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

them.

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

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

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

They average around there.

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

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

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

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

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

RENEE SACKS: Yes. I will stop talking.

SENATOR AKSHAR: Thank you.

RENEE SACKS: No problem.

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

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

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

Today New York City is announcing a disparity study.

I don't know all the results of it.

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

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

And they said yes.

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

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

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

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

Sandra.

SANDRA WILKIN: Thank you, Renee.

And thank you, Senators and Chair people.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We converted that to Local Law 1.

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

comprehensive and the most competitive MWBE program around the country.

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

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

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

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

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

That's an issue in itself.

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

Thank you.

SENATOR RITCHIE: I've got some questions.

SENATOR AKSHAR: Senator Ritchie.

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

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

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

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

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

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

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

RENEE SACKS: No.

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

Women Builders Council that are women.

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

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

So we do have a sampling of some of that, and WBC does have a position on personal net worth.

Originally, we had looked at it, and some of our board members said, let's remove it.

We recognize now that personal net worth does need to be in place. It needs to be realistic, though, across different markets, based on other factors.

So a construction company's personal net worth may need to be higher than a communications company, or other types of companies that are in a particular market sector, in order to compete.

Because of factors, which I'm sure you're aware of, based on ability to secure a loan, that's based on your revenue and ability to secure bonding, which they look at your revenue, but they're looking at other things.

And so the personal net worth issue is one that we feel we're flexible on, and needs to be looked at.

We do think that the 3.9 million, I think it's gone up now with the cost-of-index inflation, is really too low.

And the fact that it would be set by ESD, our board also manifested some question: Well, what factors would you use to determine that?

One of our other board members, Amy Criss from 84 Lumber, and I don't mean to steal her thunder, is here, and will talk to that a bit later.

And she has an excellent suggestion for allowing companies that may have graduated out of the program to actually become mentor and supporters of smaller companies, and make that regulated so that it's not just arbitrary.

It's not hundreds of companies.

Many of the companies that are graduated, or are getting ready to graduate out of the program,

because of personal net worth, are doing so just at the -- it's a tipping point.

If they actually graduate, they may be out of business if they graduate.

So that's a problem, in construction in particular.

SENATOR RITCHIE: Okay. That was one of my questions, because you did mention that one of your members was working on The Javits Center.

RENEE SACKS: Uh, yes, yes.

SENATOR RITCHIE: And I was just wondering how they were able to participate in that kind of project without getting into the net worth issue.

RENEE SACKS: Well, that's interesting that you ask.

So The Javits Center is a joint venture of Lendlease-Turner, two of our board members. One comes from Lendlease, one from Turner Construction Company. And they have done extensive outreach to find MWBs.

Other board members are participating with contracts. One could be a finishing contract, or, wall and ceiling, and they're getting contracts.

So in construction, construction is --

And I don't want to speak to construction.

Sandra, you probably should.

-- it's profitable, but it's not as profitable as you think. Because of the time that it takes to get paid and have cash flow flow through a company, it doesn't necessarily end up in your bank, in your personal bank, and increase your personal net worth. And it's about how companies are also characterizing themselves.

So while I can't speak to that specifically, the companies that are getting contracts throughout the large mega projects, the LaGuardia development, are not suddenly jumping out in personal net worth.

The money is remaining in the business, and so it doesn't impact their personal net worth.

And a smart business person can negotiate that so that they remain within the program.

Sandra.

SANDRA WILKIN: In -- in particular, you see firms throughout New York, depending on where the project is -- in particular, you mentioned The Javits Center -- there should be firms, and we should encourage throughout New York State, to see that there are minority- and women-owned firms to be able to have the opportunity to bid on that.

And as a result of these large projects, they should go out to other areas of the state, and make sure that these firms are one -- or, have the ability to do the work.

And that brings us to growing and -- growing the capacity of the firms, and to be able to have access to bonding, access to being able to have the kind of labor that they would need for those -- for those projects.

It is out there.

And once again, it is to encourage women, in our case, for women builders, to grow women builders throughout New York State.

SENATOR RITCHIE: So I'm certainly supportive of growing women builders.

But, once again, we're back to talking about going out to other areas.

And I know you made a comment earlier that -- that there was a lot of work in the North County from what you have in your testimony here?

RENEE SACKS: Well, there is work there.

There's also transportation work.

So what I simply looked at was what available to me quickly. And I looked at your economic-development forecast for the regional

economic development council.

There are other projects that the New York State Department of Transportation is doing in that area. And for those projects, it's often hard to locate MWBs to participate in them.

But the MWBs are there.

The question is: The contractor raises a hand and says, "I can't find them."

I know that for a fact, because they also raise their hand and say they can't find minority and women to be part of the workforce.

And because many of those projects are federally funded, there are requirements to have minority and women, there are certain numbers.

New York State Department of Transportation has made very aggressive efforts, they're trying very hard.

And so I will -- and I don't mean to be rude at all, but, I called a local union for an apprentice job, because I wanted to do that in New York State, in Upstate New York.

I don't recall the exact area. It was one of the regions that I was looking at in terms their apprentice program for a study that I was doing.

And I called, and no one answered the phone.

And there was a posting on the department of labor website that gave you five days for the posting of availability.

Apprentice -- five apprentices were available.

So there's really not an easy the way to access an opportunity to grow.

One of the things WBC has recommended is pre-apprenticeship programs, to be able to fuel new -- new -- new talent into the industry, because, over the next decade, there isn't a pipeline to new talent.

Women are one piece of it, and we're doing that through Women Builders Council. But it doesn't seem to be happening elsewhere.

The union, unions are working hard in the apprentice programs. They've opened their doors wider to those that are different to minority and women, but there's only a handful of women in all of those apprentice programs.

There are few in the carpenters, but they're very few.

There's a few in the electrical industry, but they're few elsewhere.

It is an industry that needs a rebranding so

that people will come into the industry.

But the State can develop community college programs, high school programs, pre-apprentice training programs, and begin to educate a new -- a new pipeline of labor to get in there.

And what happens to labor?

If you're really good at what you do, you end up starting your company.

And if you start a company, then you begin to grow if you get projects, if you get a small project.

No one can hand you a large project and expect a small company to do it.

So the projects need to be right-sized.

And I will say that -- and I mentioned the MTA because the MTA has over 400 companies -- the program is now in its eighth year, and the program has graduated some people out of it.

These companies are now getting contracts.

They're construction companies.

They weren't in transportation.

They've learned the transportation industry.

They learned how to do business with the agency.

And that's complicated.

Doing business with the MTA is very, very complicated, the forms.

I continue to learn about it.

It's very, very difficult.

So the forms need to be managed.

Documentation needs to be managed.

Rules need to be followed.

Safety needs to be followed.

And so these smaller companies need, what Sandra spoke about before, a mentoring program, or a mentoring system, that could help small companies.

I mentioned before --

And I know you're looking at the time. I'm sorry. I'm very sensitive to that.

-- that it's very hard to find a capable company.

I look at some of the construction companies that I work with. Some of them have really grown immeasurably over the last several years because of the training provided by certain agencies, and, also, the potential training that could be provided by companies, by subcontractors and contractors, who could have mentor-protege programs within their -- within their portfolio; however, they're not permitted to.

Construction is very complicated.

There's something called "commercially useful function," and that is, you cannot help an MWB do something that they should do by themselves. You cannot provide that assistance.

And as a result of it, there are historical practices that impede MWBEs succeeding on a job.

I will give an example from our president who could not be here today, Deborah Bradley.

She was on the Tappan Zee Bridge project. She needed a crane.

There was a crane on the project.

She could not rent the crane. She could not borrow the crane.

She had to lease her own crane, bring the crane in for a day, endure the cost, pass the cost along to the State, because that -- it was a -- you know, it was a government project, and have the crane.

And that particular example on commercially useful function, and I'm not the right person to know all the intricacies, our board members do, needs to be looked at.

So mentor-protege programs which are, from the federal level, approved through a special

agreement. DBE provides for that. A disadvantaged business enterprise can have that mentor-protege program. You have a written arrangement between the mentor and the mentee.

That does not exist in New York State.

And so many of the larger companies can't even help the smaller MWBs.

And this runs across -- it gets complicated.

It runs across many of the different industry areas; for example, construction management.

If I'm a construction manager and I'm an MWBE, I really can't use your computers and your drawings at your site, because I would be -- I would be getting assistance from you.

And that is one of the -- right, that is one of the issues?

SANDRA WILKIN: Well, it's one of the -- right.

RENEE SACKS: It's one of the issues that some of the companies are dealing with, so they don't compromise commercially useful function, which is legally sanctionable.

SENATOR RITCHIE: Okay. So that might adding into one of the other issues we're having in the North County, because the list is not updated, and

when contractors are out trying to find businesses to qualify, many of them, they're not in business anymore.

And for some of them, one instance, it was a state project, where they had to find somebody. And they ended up with an asbestos company because that was the only one that qualified.

And, apparently, they had talked to many people who had dealt with this company, and were told that they aren't going to be able to finish the job.

And that's exactly what happened to a detriment of the State project.

So, you know, I appreciate the fact that you talked about vetting them, and that there needs to be an apprenticeship program.

And maybe that's what we should be looking at, ways to allow the small companies in my area to have the expertise coming in, because many, I think, that are on the list that you looked at are not operational, can't handle the job, so it's kind of skewing the numbers a little bit.

RENEE SACKS: No, I understand that.

But if you don't create a focus of opportunity in your area, where you are providing

technical assistance, where you are providing job opportunities, if I was a construction company, maybe in the North County, and I couldn't get any work, I would begin to do other things.

And that has happened.

When I reached out to 500 electrical contractors in New York, from the directory, that were located in New York City, and some were located outside, I took them out because I didn't think they traveled to work on that particular project, I found that many of them didn't want to even try. And many -- there were some that didn't update their profiles in the ESD directory.

Let me say something to the defense of ESD, through something called "The New York State Contract Reporter."

And The New York State Contract Reporter e-mails me all the time, so I assume they e-mail the other MWBs that are in that directory, to update their address, their profile. They do it annually, and I do it.

Yes, it's complicated.

I have to go in and do it.

I have to remember my password and my user ID, and I have to go back in, and it's different.

The user ID and password isn't the same for everything else I'm doing with ESD.

It is a complicated system.

But without some complexity, and without some rigor and control, you really don't have anything.

Then you have shell companies trying to become involved in government procurement.

And so we've gone from, where once I went to Washington and someone said "five companies build the world," and they do, because many of the companies that we're even talking about are owned by other companies that are internationally based.

And now we have smaller companies that are actually becoming successes. They're becoming five-, ten-, fifteen-, twenty-million-dollar firms in the construction industry.

Not always in the other industries, but in the construction industry, they are growing, they are hiring hundreds of people. And they have an opportunity to grow, and also to train others.

I don't know how to respond to you when you don't have availability in a particular area.

Then you need to look at the problem of:

How do you great create that availability?

How do you create those programs?

And how do you get companies?

Companies will go where there's opportunities.

I'm New York-based. I also work on Long Island.

Will I go to Westchester? Yes.

I've been asked to go to Baltimore.

I've been asked to go to New Jersey.

Need bandwidth to do that.

And so, as a small company, I run a business and I make payroll. And I'm giving that you side of me because I think it's important for you to consider that.

Companies, if they have an opportunity, will grow.

If you cut the opportunity, there is no place for them to grow, and they will just redirect inward, take private work if they can compete.

Let me say one last thing that was in my testimony. I didn't think I read it.

The companies that are now public -- working for public works in the -- in -- primarily, in the union area, if that work dried up, it would be very difficult for those companies to continue tomorrow. They wouldn't have work if those government

contracts weren't there.

And so the government procurement is very, very important for creating new companies. Those companies are going on and growing to do private work.

I hope I answered your question, but I know it's a dilemma.

SENATOR RITCHIE: Thank you.

SENATOR AKSHAR: Ms. Sacks, when you -- you spoke several times about cap; we're trying to cap the amount of MWBEs.

What did you mean specifically?

RENEE SACKS: Specifically that, if you develop goals.

So if you develop a goal, and you say there's only a 10 percent goal in an area because, based on availability, there's only -- I don't know -- I'm not sure what we're basing any cap, any limit, on a goal.

SENATOR AKSHAR: Who's trying --

RENEE SACKS: So --

SENATOR AKSHAR: Who's trying to cap it, though?

RENEE SACKS: I thought that that was part of one of the bills that had been circulated.

If that is my error, I could look --

SANDRA WILKIN: When we talk -- no.

SENATOR AKSHAR: I'm sorry?

SANDRA WILKIN: Just to inform you on the cap, we talked about a cap, as an example, with the Local Law 129 with New York City.

It was -- it's the -- one of the requirements were that the contracts were under a million dollars.

Therefore, in order to make the goal, you would only be allowed, as a -- to provide for goals for contracts that were under a million dollars.

That re -- when the City realized that that was an impediment to growing companies in -- six years later, they then changed it where there is no cap for the projects.

So you can bid on any contract with -- depending on your abilities, obviously.

Here, I think that New York State does not have a cap for those, which is an important thing to note.

But the sense of having only limit the MWBEs to a specific region, perhaps, to us, it seemed very similar, going down and having that same kind of concept, or methodology, in saying, well,

you can limit the firms only to do business as an M/WBE within your region, let's say. And that would limiting if a firm has an ability to do work in another county, or a nearby county.

So to the whole purpose of these programs is to grow the businesses. And in order to do that, the opportunities have to exist in measurable points, in that they're within New York State, because of the services that one can have, rather than just limit it to a specific region of that locality.

RENEE SACKS: I was referring to one of the bills, and I'm not remembering a number that had been -- there have been a flurry of bills.

And so one of the bills indicated that the goal would be capped based on availability for a particular project or area.

Am I correct on that?

SENATOR AKSHAR: Yes, so I just want to make it clear that the piece of legislation that Senator Sanders and I debated a couple of weeks ago was not -- we weren't capping movement or restricting movement for one to work.

We were simply saying, the Governor's come up with this arbitrator number of 30. Right? This is

something that we discussed.

We're all talking about growing capacity.

What I was arguing in the legislation was that, based on -- based on the capacity of that region, that's what we should -- that's what we should be using.

Now, as I said to Senator Sanders during our discussion, if it was 14 percent, and we really wanted to get to 30, maybe ESD would do a better job of growing capacity in certifying MWBEs so we could get to that number.

So, I certainly wasn't trying to restrict --

RENEE SACKS: Yeah, no, no. No.

And so I hope I didn't misunderstand, but the fact, when every -- what Sandra was talking about, when they put that million-dollar goal --

SENATOR AKSHAR: Yeah.

RENEE SACKS: -- nobody could -- no White woman could participate in those projects. So it ruled them out completely for -- for over -- from 2004, to --

SENATOR AKSHAR: Yeah.

RENEE SACKS: -- to 2013.

For many, many years, so White women did not participate in that.

However, what -- when you put a goal, what does the goal really mean?

The majority company, if they're given an opportunity not to meet a higher goal, will meet the lower goal.

It's a question of the creativity of the company to find and -- and serve to support smaller companies in that -- in that particular project.

And that's really the argument.

So the argument is, sharing, and greed, and whether or not you can actually develop a program that can get good companies on your team.

Many of the companies will find new subcontractors.

But our programs now all use -- by the way, and I think we should check this with some of the construction representatives that are here today -- use a trickle-down theory.

So if you are a construction manager, you hire subcontractors, and your subcontractors are often responsible for finding the MWBEs.

And so that trickle-down creates even yet a different problem, because that's -- as you look at the process of payment, that also trickles down.

And so the MWBEs, some of them do want to

work for subcontractors, they're subcontractors themselves. Some of them don't.

One of the things that's going on in New York State, which I think is important to mention before we conclude, is that, prime contractors, small prime contracts for smaller companies, would really begin to be an essential way to develop capacity.

So if you give a small construction contractor a 100,000- or 200,000-dollar contract --

And we have that now, we have discretionary awards. Some of them are up to 200,000. The MTA is up to 400,000. I know there's been discussion of increasing it.

-- those smaller contracts allow you to build your own capacity, to be responsible to a government agency.

So it means doing more work.

It means breaking some of the contracts apart, looking at it.

And one last thought:

SUNY, and I don't know if CUNY does this, but SUNY I know does this, they use an algorithm to determine available capacity.

And then the Governor came in with his goals.

And SUNY, I believe, is succeeding in meeting

its goals, as some of the other agencies are as well, in terms of what's available to them.

SENATOR AKSHAR: Of course, when you take direction from the Governor, you probably should.

Let me end on this, because we have a lot of speakers, and I'm not trying to be rude.

You said that to me.

This description of all the good things happening in the state, right, Southern Tier Soaring, and everything else, you talked about the regional economic development councils.

And I say this with respect, the six bullet points that you have here do not -- it doesn't reflect reality --

RENEE SACKS: No.

SENATOR AKSHAR: -- right, in the Southern Tier or in the North County or the Finger Lakes.

And you talked about the regional economic development councils being exciting, right, in that those councils were going to drive the economy.

Right? You said that?

RENEE SACKS: They're not.

SENATOR AKSHAR: They're not.

And they were exciting, up until the point

that the Governor stepped on the throat of all of the local people who were putting forth really exciting projects, people who understood their community. Right?

Until he took that ability away, and made all the decisions here in Albany by a bunch of bureaucrats sitting at the 30,000-foot level, it became unexciting.

RENEE SACKS: And that is not something I knew or understood.

So I, respectfully (indiscernible).

SENATOR AKSHAR: Right. Okay.

Yeah, of course.

I really appreciate your testimony, and look forward to carrying on the conversation.

Everybody good on the dais?

SENATOR SERINO: Can I ask a question?

SENATOR AKSHAR: Sure.

SENATOR SERINO: Thanks for being here.

And it sounds like your experiences are so different from the Upstate New York.

And so, in the city, if there are women that -- like you say, they expanded the Women's Business (sic) Council, and there are women from Upstate New York.

And if they belong to the Women's Business (sic) Council, if they try to do the MWBE, are they going through the City process, like, rather than --

RENEE SACKS: Okay. So the City -- the City has a certification process and the State has a certification process.

SENATOR SERINO: Right.

RENEE SACKS: There are different -- different processes within that.

And the State is a little bit more rigorous in terms of site visits.

SANDRA WILKIN: (Inaudible.)

RENEE SACKS: Okay.

So you're aware of that.

But is that your question?

SENATOR SERINO: Yeah, I was just wondering if there are women-owned businesses, Upstate New York, would they go through -- even if they belonged to your council, would they go through your process because they're under your council --

RENEE SACKS: We don't have -- I'm sorry.

We don't have a certification process.

SENATOR SERINO: Okay -- no, I mean, because they belong to the Women's (sic) --

RENEE SACKS: Builders Council.

SENATOR SERINO: -- Builders Council, going through the process that the City does, because it's not as rigorous as upstate --

RENEE SACKS: It's simply a downloadable application that they can complete.

There is not, normally, a site visit, but there are triggers there too, and controls that the City has put in place, to make sure that they're not getting shell companies or scam companies; that they're getting valid MWBE firms.

SANDRA WILKIN: There is -- there is a -- currently, a memo of understanding, to a certain extent, to fast-track the firms that are certified with the State of New York in order to become certified with the City.

And there is one, obviously, also with the City, where firms that are certified with the City of New York, that can do business with the State.

And we're all looking at, obviously, making the certifications throughout New York State, and with the different agencies, much more of the ability of being able to streamline them would be very helpful too.

But the -- what -- being in this business for as long as I have, what I see is, with the large lens, is that there is an increase, one, in the certification of both on local levels and in the state, and, also, the ability to do this work, and -- and women wanting to come into the industry, which is very encouraging to want to do it, and to find a mechanism with which to be able to do business with the State of New York that's here --

RENEE SACKS: There is a --

SANDRA WILKIN: -- and having all of those doors being able to be opened.

And it's -- and, quite honestly, as difficult as this is, because New York is very complex, it's a good and thrilling opportunity to see that.

And the encouraging feeling with the Senate, that, truly, the State and -- wants to encourage minority- and women-owned businesses to participate in the businesses.

SENATOR SERINO: And I absolutely love the concept, but it's just interesting to me, because listening to people that call my offices, and I think it's such a disparity between upstate and downstate, that it's a huge issue.

Like, you guys love it. But then we get the

people that are calling and complaining constantly how the system doesn't work.

So it's, just, I guess we have to find that balance where we can make it work.

SANDRA WILKIN: And I do have an opportunity to travel the state, and I do see that.

And I think it's up to all of us to realize that we have to encourage the other women businesses around the state to be able to -- one, to become certified, and to have the opportunity of doing business and to be able to grow it.

And I know, on behalf of Women Builders and our executive director, Renee, and our board members, we would love the opportunity to make sure that we transfer the state, and be able to see other women to be able to support them, because when we started out, it was very, very lonely.

And being a women business, you know, some of the things haven't quite changed yet. And we're hoping that does, and we can continue having more and more memberships throughout New York State, especially upstate.

SENATOR AKSHAR: Senator Sanders is going to close.

SENATOR SANDERS: I think I can; therefore

I can't.

I can attest that New York City is different, but it didn't start out that way.

It was changed by the people themselves, and two of the people are sitting right before you. They're being very kind, but they were very ferocious and -- as advocates to change things.

And it took some of us legislators -- at that time I was one of them -- time. But they were ferocious in changing our minds, and I would argue for the better.

My last point that I wanted to point, and this is an important one:

I would say, typically, when a disparity study is done, the group that does the disparity study is hired to defend the study.

Makes sense.

You did it, you both know it better than anybody else.

Defend it.

The Empire State did it different. We did not hire the group to defend the study, so they don't have a voice.

And there's an African saying that says, "The man who is not there is always guilty."

So we don't have someone to defend this study, if you wish, so we're going to hear things.

And -- well, having said that, thank you for doing what you're doing.

And thank you, Mr. Chair.

SENATOR AKSHAR: I would invite Mason Tillman anytime they wanted to come --

SENATOR SANDERS: Yes.

SENATOR AKSHAR: -- and provide testimony, to give us that testimony.

Ladies, thank you so much.

RENEE SACKS: Thank you.

SENATOR AKSHAR: Johnny, you're up next, from The Business Council.

So I'm going to be the bearer of bad news now, because we've gone very long with the first couple of people providing testimony.

Maybe we could limit it 10, 15 minutes --

JOHN EVERS: Sure.

SENATOR AKSHAR: -- for the rest of the group, just so we can keep it moving.

JOHN EVERS: No problem.

SENATOR AKSHAR: Otherwise, (indiscernible) for a week.

JOHN EVERS: No, I said that to my good

friends Brian Sampson and Mike Elmendorf.

I don't want to just say "ditto," but I'm before Sampson and after Elmendorf.

But --

SENATOR AKSHAR: If you could just talk into the mic for me, just so that the rest of the audience can hear.

JOHN EVERS: Certainly.

Good morning.

I'm John Evers. I'm director of government affairs for The Businesses Council of New York State.

We represent about 2400 businesses, employ 1.2 million employees.

Additionally, within The Business Council, we operate the New York State Construction Industry Council.

Senator Akshar has addressed it. Many of you are aware of it.

It's comprised of the state's leading construction material, and supply heavy highway and cement companies, engineering, and architectural firms, and construction-related trade associations; about 475 members.

I want to thank the Senate and the Chairs,

collectively, for having this forum to discuss the MWBE.

I think the first thing I have to do is to emphasize that The Business Council has a strong and long history of supporting the MWBE program and Article 15-A, the executive law.

I want to thank the Senate also for extending the program until December 31, 2019.

As a starting point, it's essential to recognize that the primary purpose of the state's MWBE program is to address any historical discrimination and result in disparities in the awarding of state contracts.

It is indeed a laudable one, but this cannot occur in a vacuum.

Under the U.S. Supreme Court's 1989 decision, City of Richmond versus J.A. Croson Company, the Court determined that the state and local governments engaging in such programs must base them on facts as ascertained by those studies.

When disparities are identified, they are then addressed by programs that both proscribe remedies and take into account current capacity -- and I'm going to use "capacity" a lot today -- within the MWBE sectors.

Goals established in the aftermath of a disparity study must be crafted to address issues found in particular markets, with an ultimate goal of decreasing any disparities with particular industries in regard for public procurement.

Now, that's pretty simple.

For example: In 2010, and this was mentioned earlier, 22.7 percent of public construction contracts, and 24.53 percent of all construction-related contracts, were targeted in the executive law. And that's a combination of both minority and women contracts.

I am certain that many legislator have heard concerns regarding the Executive's mandated 30 percent goals in state contracts and the lack of data to support the significantly increased participation target.

As a staff member responsible for construction issues at The Business Council, I can attest the industry's concerns regarding this application of the executive law.

I would urge your Committees, and this is in some of the testimonies today, to look closely at the Executive Law, Section 313, and Section 5 of the New York Consolidated Rules and Regulations,

142.2(D).

It just outlines it.

That's one of our major complaints about this.

That is the law that should be followed.

All must be considered by statute in setting participation targets.

Since these factors seem to have been ignored, determining a blanket statewide mandatory goal of 30 percent of contracts, it seems New York State is not following the key sections of the executive law, amended after the 2010 disparity study, such as industry; again, capacity; percentages articulated in the law based on the disparity study, and paramount to any goal in the Croson case.

That is the basis for these studies.

That is the basis for these programs.

In the 2016 study made several questionable claims.

Notably, that 53.05 percent of prime contractors and 53.48 percent of subcontractors are MWBE firms.

But we have found that when these goals were set for 30 percent, and our contractors came to us

time and again, increasing -- asking for an increase in waivers, it didn't make any logical sense.

I would love to know, that if this was the universe identified in this study, which was almost put into state law, why would there be need any room for waivers?

It just doesn't follow mathematically.

Now, there are many questions that need to be answered by the Legislature when it comes to renewing 15-A of the executive law.

Now, we have been supportive of industry efforts to generate additional information, and I laud the Senate for asking for additional data.

For example: When AGC of New York began its attempt to find data upon which various state agencies have been basing their MWBE goals, ultimately leading to a filing of an Article 78 lawsuit, The Business Council filed an amicus.

The results of that litigation showed little study has gone into agency-specific goal settings.

And I won't repeat what Mr. Elmendorf said.

We wanted the results as well.

Turns out they're not forthcoming.

To that end, we applaud the Senate for not accepting the Executive's draft proposal for a 15-A,

including the acceptance of the 2016 disparity study.

If that had been made law, this would have changed the program almost unidentifiably.

It would then spread to locals without local studies, creating a 10 percent bid preference in the law, investing ESD with broad new powers, rather than improving some of the performance right now ESD has for certification/recertification, which seems to keep coming up.

Just a couple of points of we would suggest to this Committee and to the Senate, and the Legislature overall, and the Executive:

Increase the W -- or, MWBE capacity as needed.

I've been doing construction for The Business Council and other entities now for about 20 years.

When it comes to the MWBE capacity, that is the goal: To have a healthy, vibrant industry that can make these goals, ultimately, as Mr. Elmendorf says, where this will then merge the capacity out there with the need out there.

We have been adamant when it comes to workforce development, and we would urge that some of the workforce-development money that was set

aside in this year's budget be targeted towards that kind of capacity.

I wouldn't -- I'd be remiss if I didn't add some of the other impediments. And this kind came up earlier, and, hopefully, will come up later today as well.

This is a holistic approach when it comes to construction.

Some of the impediments for the entrance into the construction world are some of the very laws we have on the books. And I've been in many of your offices discussing these.

The scaffold law:

We all know that the impact of that has on the coverage, if you can soon get it with the dwindling insurance markets covering this.

I guarantee you that's an impediment for entrance into the market.

Apprenticeship requirements:

We just heard the last speaker talk about apprenticeship requirements.

And, also, the mandatory PLA agreements.

How are these small companies going to get into the markets with all of these major impediments in their way?

And, lastly, as I mentioned earlier, ESD.

If ESD is going to run this program, then the certifications need to be done faster, the recertifications need to be done faster. Websites' lists, (indiscernible) that information, all that needs to be updated and approved.

If our contractors are coming to the State of New York, asking for help, they should get help right away, and a lot of this falls on ESD.

In the budget there was discussion of improving ESD's performance.

I would say that there's one key thing right now that can be done when it comes to the MWBE: If they're going to administer the program, then they need the resources to do it.

And I've kind of hyphenated this, and I know I've given you the testimony in advance, but I think there's a very big opportunity here.

This is a very all-encompassing program. You have a year to do it.

We signed on to the industry letter that Mr. Elmendorf talked about, where we needed -- we had 30 industry partners saying, do the study.

Appropriate $2 million, do it again.

Take that study, fold it into the program,

and renew it.

The program's not going away. You've given some breathing room here.

But it's your opportunity to make sure that this works; that the law is followed, that the proper studies are made, and that this disparity study is not questioned. That it is taken, like it was in 2010, to fold it into the law to improve the State's procurement process when it comes to MWBEs.

Thank you, Senators.

I will entertain any questions.

SENATOR AKSHAR: Senator Little.

SENATOR LITTLE: Thank you.

Thank you, John.

SENATOR AKSHAR: Senator Little.

SENATOR LITTLE: Thank you.

And thank you, John.

You know, several years ago I was appointed to the task force on the minority- and women-owned business, and there were many agencies on that task force, there were a couple of legislators; just people involved, and certainly people from the Governor's Office as well, and we haven't met in probably two years right now.

Do you think that would be helpful to get

this task force going again?

JOHN EVERS: Certainly.

Any input on moving the ball down the field, an old football term, would be helped.

And these are helpful.

During the budget, we met with Senator Sanders on this.

He hosted a meeting just down the hall here, three hours to discuss this.

But I do think having the executive involved, rather than just having it once a year when it came to the budget, would be appropriate.

SENATOR LITTLE: Right.

And I think, also, that with all the agencies involved, as well as the minority- and women-owned business division of ESD, we would get the resources that we needed, because I think everyone's pointing out that there isn't enough staff to help get these certifications fast enough.

And the other question I have is, on the recertification, a three-year window doesn't seem long enough because the paperwork is so difficult.

They have to be in business for a year as a minority- and women-owned business before they can apply.

It takes another year and a half, sometimes two years, to get certified.

And then, before you know it, they're getting hit again with a verification, recertification process, and more paperwork.

What would you think would be a more appropriate time period?

JOHN EVERS: Well, I've heard from our members that the certif -- to get into the program is very difficult. And I've heard as high as 14 to 18 months for recertification.

I think the input of Empire State Development on how this is currently operating would be a must.

They could probably tell you, rather than me telling you anecdotally, saying that they need to have some help in streamlining this, and maybe more staff.

I would love to know what they say about it.

SENATOR LITTLE: Well, you get a driver's license and it lasts for eight years, but that's probably too long.

But I would think something better than three years would be appropriate.

JOHN EVERS: These are, by and large, I imagine, with the capital needed to start these

companies to keep them going, that I would venture that it would be longer than three years.

SENATOR LITTLE: Okay. Thank you.

SENATOR AKSHAR: Senator Sanders.

SENATOR SANDERS: Well, it's good to see you, sir.

JOHN EVERS: Thank you, sir.

SENATOR SANDERS: Let me start of with an agreement.

I bet you didn't expect that.

JOHN EVERS: No, absolutely.

SENATOR SANDERS: Let me start with an agreement.

I think that -- that one of -- the fastest way to make an improvement on this project, on this program, is to put adequate staffing to ESDC; adequate staffing, triple the staff, whatever is needed.

Now, even the Governor saw this when his budget proposal said that they would have five additional employees.

I don't -- you know, none of us have studied it to know if that's enough, but, just my gut feeling is, it's way under what is needed.

We should -- if I had my way, we'd have five

for each region, or something of that nature.

We do need to -- it -- it should not take -- for -- this is the day and age of computers. We should not have something taking month after month after month, which should take -- whatever's taking 14 months should take around 4 months, at best, or something of that nature.

We do need to do things there.

Now, we and several groups had the pleasure -- well, I had the pleasure of meeting with them, and we wrestled for three hours or more -- it did seem like five -- and -- but when I -- when I left it, I didn't feel the goodwill that I -- I -- I was looking for, because, at the end of it, it turned into an all-or-nothing.

And I said to these groups: What are the things that we all can go to the Executive and say, We need change? What are the minimum amount of things?

And the group consensus was: No, we want everything or nothing.

And maybe that's how things are done in different worlds, but in the world of government, usually, that's not the case.

I implore you to -- to join what I believe is

an effort that's going to say: Here are some of the things that can be changed immediately, here are some of the things that we need to change in the next six months, and et cetera, and not take an all-or-nothing approach.

I -- if were you there directly, I'm sure you wouldn't have done that. But, that group, we came out with all or nothing, and it ended those things.

All-or-nothing usually ends up, somebody's got to win and somebody's got to lose, and you can't be bipartisan if you want everyone -- all losses will go over here and all wins will go over here, I guess, part of the reason we end up in these flip positions, I would argue.

Any disparity study, any study, can be challenged. That's just the nature of a study; anytime you write anything, it can be challenged.

Any study can be challenged.

I saw a capacity study that's making its rounds.

If we ever sit down and look at Thomas Bolton -- Professor Boston's study, we're going to have challenges to that study.

Any study can be challenged.

The thing is, does a study meet with the

truth? as you were speaking earlier, Chair -- Chairs.

Even -- you presented things. Does it meet with the truth in the area that you are?

If it doesn't, then, you know -- then we've got to look at more than simply words on paper.

We're going to have to look at what's going on on the ground.

I look forward to continuing to work with you, and others, to really wrestle with something, and something that should be -- it shouldn't matter whether you're a Democrat or a Republican, if it's the truth.

There are no democratic truths. There are no Republican truths.

There's a truth.

Who champions it?

Well, who gets there first.

Looks like you did this time.

Let's -- let's catch up.

Thank you very much, sir.

Thank you.

SENATOR AKSHAR: Thank you, Senator Sanders.

John, always a pleasure to be in your company.

Thank you for the testimony today.

JOHN EVERS: Thank you, Senator.

SENATOR AKSHAR: Ms. Richardson and Ms. Farber.

DENISE RICHARDSON: Good morning.

Thank you for inviting me to speak today.

In the interest of time, I'm going to really truncate my testimony. I'm going start off by offering some comments on some of the questions that have been asked.

To Senator Little, I think a five-year window on recertification is appropriate, and here's why I think five works.

Many times, a business who is signed up for a subcontract will find that the time in which they plan to perform the work will move as the projects need move.

So you will find a situation where someone is looking to be recertified. They have a portfolio of work on the books that they haven't performed yet, and it falls within that window time of them being certified, making their new certification inaccurate because it doesn't reflect current work that they are scheduled to perform.

So a five-year window would open up that

opportunity for recertification, and I think would eliminate some of the inaccurate information.

The other thing, in terms of ESD, I'm going to differ from my colleagues.

I do not think that the issue is that ESD needs more staff.

I think the issue is that the process needs to be fundamentally changed, and I'm going to address it specifically from some examples that I have seen from women-owned businesses.

It's almost a no-win situation.

If you come from the industry, but you haven't specifically performed the work; in other words, you are, you know, a paving contractor, but you yourself have never been behind the paving machine doing the paving work, the decision will be made that your company cannot perform a commercially useful function.

There are thousands of corporate executives around the country that run very successful businesses that never actually performed the work.

I'm sure that Jeff Bezos has never worked in Amazon, packing boxes.

That's just an example.

And so my point is, is that, then, on the

flip side to that, you have a woman who has come up through the ranks in the business, but because her business includes other family members --

And I want to point out that most construction, and construction in particular, most of the businesses are family-owned businesses. For the GCA in particular, 97 percent of our members are family-owned businesses. But people focus on our six members who are large publicly-traded corporations and think that's what the GCA is. And that's not true.

-- and so when ESD looks at fam -- a woman-owned business that has family members, the immediate assumption is, well, the family members are controlling the business and not the woman.

I'll leave my comments right there.

And so I think one of the things that needs to happen in terms of the initial certification process and the recertification process, is that the process needs to be decentralized.

And I'm going to recommend, in fact, that the agencies that do the contracting become more involved in the certification process because they know their agency requirements.

And some will argue firms get certified

across multiple agencies, and that's true.

But at the same time, OGS, SUNY, they know what their building contractors need to do to successfully perform the work.

DOT knows what its contractors need to have in terms of capitalization and business expertise and equipment in order to successfully perform their portfolio of work.

Right now the whole process is centralized in ESD, and there's not adequate communication between ESD and the agencies about what companies do, and what they need to do to successfully perform.

Also, to address the regional issue that many of you face, by tapping into the resources in your agency regional offices, they know the vendor community in that region, and they can help with the outreach as to why successful firms in the private market in your region are choosing not to be certified, or finding problems with the certification process.

And you should be using your agency regional offices as more of a resource in this area than is currently being used.

The other thing that I want to talk about briefly is, one of the big barriers for small

businesses of any demographic, and for MWBE firms as well, is the contract process itself.

There has not been enough of a focus within state government to look at the contract terms and tailor those contract terms to the size of the project.

The terms and conditions for the Second Avenue Subway project needed to be a lot different. There was a lot more risk, a lot more liability, many more issues, than they need to be on replacing a stairway at a subway station; and yet the contract terms are the same.

The payment process is incredibly onerous.

And when you talk to a lot of MWBE firms that do not bid for prime contracts, one of the reasons that they will say is: They can go to their prime contractor and they can get some help getting paid. But when they're prime contractor with the agency, they have to wait.

And, yes, the contracts say that people will be paid within 30 days, but it's 30 days from an approved invoice.

And I can tell you hundreds of stories, where there have been many, many delays within the agency in getting to that "point of approval." And it

could take weeks and months before the agency decides to move your invoice to the point of it being approved for payment.

And that's one of the biggest barriers for MWBE firms.

In 2017 the GCA did a report that we submitted to ESD, that made 16 different recommendations for how to improve the MWBE program.

And a copy of our report is attached to my formal testimony, and I hope that you will take a look at it.

Unfortunately, there has been no dialogue and no follow-up from ESDC about our recommendations.

Now maybe all 16 of them were not things that ESD would agree with. But I can guarantee you that in there there are one or two, and possibly more, recommendations that deserve a thoughtful review and deserved consideration.

And there has been silence, and that has been extremely unfortunate.

And I just want to touch on the issue of a mentor-protege program.

There's too much emphasis on making the responsibility of a mentor-protege program on -- onto prime contractor.

When a prime contractor bids a job, the contractor looks at the schedule, the project requirements, and the technical specifications, and puts the team together that it believes can best help them meet those obligations.

It is not unrealistic for a prime contractor to expect that all of its subcontractors will come to the table knowing how to do the work that its subcontractors have bid on.

A mentor-protege program that requires the prime contractors to teach their subcontractors how to do work has to exist separate and apart from any contract on which they are bidding. It's just unrealistic.

And if you take the issue away from construction and move it into something like IT, for example, there is no way the State would expect that an IT professional that it hires to develop a system application for them would hire firms to work on that application that have never done computer coding before.

And yet, for construction, we are asked to take firms that perhaps have never done the work that we're looking to contract for and teach them how to do it at the same time that we're trying to

meet a budget and a schedule, and that's just unrealistic.

And so, instead, what we are recommending is that the agencies take on this responsibility.

And, in fact, the MTA has done that by setting aside certain of its contracts for firms in the mentor-protege program where they manage the program directly. But, there is one significant weakness, and that's within the area of signal rehabilitation.

We had recommended to the MTA in 2010 that they set aside time in their signal school specifically to teach emerging and small electrical contractors how to do signal work.

It's been a subject of much press. Even upstate, I'm sure you've all read articles about the state of the subway system.

And, yet, nothing has been done in that area, and yet it's a critical part of the MTA's procurement portfolio, and yet they have not done anything to build that capacity, and expect, instead, that the limited number of prime contractors that do signal work will form a program to train those other firms. And that's just not realistic, when, in fact, the MTA has the resource

available through its own school that it uses to train its own personnel, to train other people in the industry.

And I think as we look at building capacity, building contractor capacity, throughout the industry, and throughout the state's portfolio procurement, and not just within construction, but to look at goods and supplies, to look at health care, and look at the other areas of procurement.

What needs to happen is, is the agencies that are doing the procurement need to take greater ownership in building their capacity and doing the outreach to the agencies.

And, finally, I want to touch on one other issue.

The directory, the ESD directory of certified MWBE firms, is the touch point in terms of evaluating if a prime contractor has met its MWBE goals, because that is the only way that a contractor gets credit, is by using a certified firm, and yet the directory is fraught with inaccuracies.

We did a study of construction firms in the downtown state region because that's our most often-used pool of firms, and we found that over

half of the firms had incorrect information in the directory.

So what does that mean for us?

As prime contractors, if we're reaching out for firms that haven't done business with us in the past, we're looking for firms that are no longer in business or firms that have incorrect contact information.

At the same time, when we're doing a mass solicitation, we're sending solicitations to firms for work that they don't perform because the information in the directory is incorrect.

And, again, touching back to the agencies, the agencies that do the procurement, that are looking to meet the MWBE goals, are also in the best position to be working with ESD to straighten out the directory because they know who the vendor community is.

And so I hope you'll take a look at my formal testimony, but I'll answer any questions you have.

SENATOR AKSHAR: Anyone?

Senator Sanders?

SENATOR SANDERS: A very quick point.

Ms. Farber (sic) --

Might be good to use a mic.

-- let me push pro one of the ideas that you put out.

You said that we should -- an idea is, to go to the -- to certify at the regional area.

The -- if we were to do this, then you would certainly need some stronger IG types or MWB compliance officers.

You'd have to -- if you were to do that, you would have to really beef up your IGs, because you're -- otherwise, you're assuming that just because somebody is the agency head that they have no biases themselves.

So you would have to figure some way of making sure that somebody is making sure that that happens.

DENISE RICHARDSON: I think there's lots of existing levels of oversight and investigation in government.

And I think the thing we need to focus on is not so much what might go wrong, but the fact that all of you have touched on today how cumbersome the process is, how lengthy the process is, and how, in many ways, it turns into an arbitrary process, because some firms will be certified with the exact same ownership profile as another firm that's denied

certification.

And so I'm less concerned about that issue than I am about making sure that we have a process for firms if they wish to do business with the State, that it's a business-friendly process.

All of you have touched on today, you know, anecdotes that you've told of people in your districts that have looked to get certified and walked away from the paperwork, walked away from the length of time.

That should not be the case.

Someone's first interaction with government for procurement should not be a negative process. There will be lots of negative things that come later.

But -- and I'm serious about that.

But fact of the matter is, the certification process should be a process that welcomes firms and gets them ready to do business with the State, not turns them off.

And one of the ways I believe that we can do that, is the regional offices tend to have a closer relationship on a day-to-day basis with their surrounding vendor community.

SENATOR SANDERS: A 10-second warning story.

When we started in New York City, we gave the -- an agency was in charge of making sure everybody complied.

When we studied it, the agency that was supposed to make sure everybody complied had the worst compliance record of everybody else.

If we just leave to it government, or leave it to anyone, you're going to need to consider putting some type of way of looking in on it, and you may have something there.

Thank you very much, Mr. Chair.

DENISE RICHARDSON: I just want to touch on that for one second, if I could.

The School Construction Authority in New York City has a very successful program.

They do their own certification;

They pre-qualify all of their firms;

They evaluate the firms based on what types of work the firm can actually successfully perform;

And they qualify people at different dollar levels of contracts.

As a result, the SCA has developed an extraordinarily successful pool of MWBE firms who work at both the subcontractor and the prime-contractor level.

And so to your question earlier about examples from other states that work, the SCA probably has the most successful model in the state in terms of bringing along MWBE businesses.

But I would also urge you to look at the state of Florida that has an extremely successful MWBE program, that uses a hybrid of centralized State certification, as well as regional certification.

And, again, there's a pre-qualification basis.

And, most importantly, which is something that we desperately need, and touched on earlier this morning, we must be setting project-specific goals, because some projects will lead themselves to a very high MWBE goal.

And other projects, for example, a paving project that's done under lane-closure conditions, and done under restricted work hours, may not lend themselves efficiently to a large MWBE participation goal.

And one of the things that is starting to happen on projects is that we are trading efficiency for greater subcontract participation.

And as taxpayers, and we're all taxpayers,

those are not the way we should be making project decisions.

We should be making project decisions based on: What the work of the project is. What are the constraints in the project? And how does that project best lend itself to maximize participation, which is not a 30 percent goal across the board?

SENATOR AKSHAR: Senator?

SENATOR RITCHIE: I'm all set.

SENATOR AKSHAR: Everybody set?

OFF-CAMERA SENATOR: I would just like to applaud her.

SENATOR AKSHAR: Okay.

Ms. Richardson, thank you very much for your testimony.

DENISE RICHARDSON: Thank you.

SENATOR AKSHAR: Slight change in the program.

We're going to invite Seth Bryant to testify before Greg.

SETH BRYANT: Good afternoon.

Thank you.

SENATOR AKSHAR: Good afternoon.

SENATOR SANDERS: Good afternoon.

SETH BRYANT: So I don't have prepared

remarks, but I'll speak to my experience with the program, which is long, and has been intense over the years.

My name is Seth Bryant. I'm managing partner of an MBE law firm called Bryant Rabbino, LLP.

We're based in Midtown Manhattan. We're an 11-lawyer shop focused on transactional matters, so that means that we do a lot of bond finance work, mergers and acquisitions, real estate, tax, employment, et cetera.

Our firm was -- I founded the firm in 2009, and it's been, I think, a very successful endeavor, in no small measure, due to the program -- the MWBE program with the State.

Prior to forming the firm, I had been a lawyer at large firms.

I started my career at a firm called Debevoise & Plimpton, a large, well-established corporate firm, where I practiced for four years.

Moved to another large established firm, Morrison & Foerster, where I practiced for four years.

And before founding the firm, I was at a large firm, DLA Piper.

Our team is comprised of lawyers that have

comparable experience. We have, on average, 20 years of experience. We have practiced, again, with large and small clients.

Bryant Rabbino's client base includes many governmental entities.

We do a significant amount of work with the MTA.

We got our start in public finance with DASNY.

We have done work with the New York State Thruway Authority, the division of budget, the office of the state comptroller, and New York State Housing and -- Housing and Finance Agency (HFA), and other state entities.

And, you know, for us, coming into the public-finance space and doing work with governmental entities, it really, again, I can't say it strongly enough, it would not have occurred for us in the way it did without this program.

I founded a firm in 2003, which, in some respects, was a predecessor of this firm before moving back to the large-firm world, and explored the possibility of certification in 2003-2004 time frame.

It was a very different era in New York State

politics and in the program.

What I found was a closed door.

What I found was, I remember contacting Empire State Development, the division of minority- and women-business development, and really just getting bad information about what the opportunities were.

I was told at that time that, for us to be certified, we would have to, you know, wait for a year, and be in business for over a year, which, for a professional-services firm as we are, was not the case.

But I think the person who I talked to felt, you know, so little concerned about MWBEs, and the opportunities that the program was to offer, that the person gave me bad information.

And I took that bad information and I said, it would be a waste of time to pursue business opportunities with New York State, because I didn't feel that the climate was good.

I talked to other business owners who felt that it was a waste of time, at that time in 2003.

At that point, I think the governor was George Pataki.

And I don't think there was any emphasis or

support for the program, and so we didn't pursue certification.

We got bad information, and heard that there were no opp -- heard that there were very little opportunities.

And so, you know, we have private-sector clients, as we do now, and so we just said, you know: Why bang your head against the wall. Just pursue other opportunities.

And if the state that I was born in, I'm from Buffalo, New York, wasn't a fertile ground for opportunity, I could pursue them in other places.

I'm talented.

My team was smart, and I am smart, and so we could pursue opportunities in other places.

But it was sad.

It was a sad state of affairs for the State, and for a business like mine, which was a transactional minority-owned firm, one of the very few in New York City, of all places, and, obviously, part of New York State, that we didn't see opportunities to work with the State.

Fast-forward to 2009, 2010, it was a very different environment.

The governor at that time, David Paterson,

saw the need to strengthen the program, and, in fact, had done considerable work, as lieutenant governor, to establish an Executive 10 Task Force that looked at New York State's procurement program and rules and opportunities.

And they found -- you know, and you all, I'm sure, have access to the Executive 10 reports. I won't summarize them here too much.

But they found a closed shop, I'll say.

And so they went to make reforms, and enlisted the Assembly and the Senate as partners in making reforms. And in 2010, four strong improvements to the state's MWBE law were passed.

And from there, when Governor Cuomo came into office, he did something that surprised myself and many members of the MWBE community.

He announced an aspirational goal of doing 20 percent of the state's work with MWBEs.

Now, as an MBE, we were thrilled about that, obviously.

As a lawyer, I understood what an "aspirational goal" meant.

It didn't mean that it was the State's goal. It meant that we will try to get to 20 percent.

And, with a little scepticism as a business

owner, I thought, you know, that's nice. You know, we'll see if we get there, but, it's an aspirational goal.

But what that effort did in setting that aspirational goal, what I saw, I saw the state agencies and authorities actually tried to find MWBEs, and actually do lifting to ensure that opportunities were pursued with MWBEs.

And so it was a very, very, you know, I think, important and a strong step in support of the program, and in support of making sure opportunities are available to all business owners in New York State, or all communities of business owners.

I mean, if, you know, the great state of New York is about opportunity, then I would expect that that would be an important objective.

And so, it was taken, and I think he -- Governor Cuomo, I mean, pushed harder, and raised the goal to 30 percent.

But, again, it's an aspirational goal. Right?

And so what it did was, again, it made state agencies and authorities dig a little deeper, look a little harder.

And from what I have seen, it has put the program -- you know, it has made the program a real program.

What I have seen is that, it has created opportunities for MWBEs, where, before, there weren't opportunities.

So, in terms of the history of the program, and in kind of what -- you know, what works and what doesn't work, as a lawyer, I do a lot of work certifying, or helping companies that want to be certified, to structure themselves so that they're eligible for certification.

And that might mean that a company or entrepreneurs may come to us and say, This is our business. You know, these are the areas that we are pursuing. This is our ownership structure. You know, these are our relationships. You know, help us to get situated to become MWBEs.

And in some instances we found companies that have been eligible for certification.

In some instances we found companies that kind of said, Hey, you know, I hear that, you know, if we're certified, you know, I just want to -- you know, I don't care, whatever, I just want to get this thing certified. Can I call -- you know, I own

this business. I'd like my sister, or my wife, or someone else, to take it and run with it.

And with those clients, you know, give them some gentle counseling and say: It may not work. It may not reach -- you may not reach your goal of certification because there's a -- there are requirements in terms of independence, and just a track record in the business, et cetera.

And, you know, to the -- to the young lady who preceded me, or I didn't catch her name, but she talked about decentralizing the certification process.

I would be a little concerned about decentralizing the certification process just because of that, unless there were, I think as Senator Sanders mentioned, strong compliance components to it.

So I think, at some level, decertification -- decentralizing could be helpful, but, again, with compliance.

But what works in terms of the program, I understand that there's a lot of concern about the 30 percent goal, and people kind of just don't understand it.

I mean, it's really -- you know, and I think,

at some level, it's a bit confusing because the Governor talks about a 30 percent goal.

And you really have to actually read the regs to understand what they require. And they do require, on a contract-by-contract basis, that goals are established.

The way the Governor's Office, or the way the Executive has, and the agencies, I should say, have addressed that, they recognize that. But they have entities that enter into prime contracts, essentially, agree to use good-faith efforts to reach that aspirational goal.

And I think that that's, you know, an appropriate and not-too-difficult step to ask one to make some good-faith efforts.

I do think that there was a missed opportunity in not passing the executive budget which softened, at some level, the requirements to demonstrate good-faith efforts.

I do think that there was a missed opportunity in not passing the executive budget which softened, at many level, the requirements to demonstrate good-faith efforts.

What -- and one thing that the executive budget included was, taking away some of the

bureaucratic requirements to establish good-faith efforts, which, as an MBE, I fully support.

You know, I think that the -- the program, which has been around since 1988, has been a very successful program.

I would hope that this body would continue to support it.

I think the Governor's proposal -- or, the executive budget proposal of a five-year reauthorization, with significant reforms, was important.

But I think that, you know, the fact that the negotiation kind of watered all of that down, and, instead of a five-year reauthorization, brought the reauthorization to a one-year reauthorization, was a disappointment, certainly, to the MWBE community.

But I think, for the state of New York, we should be able to do better and give our businesses more continuity, more stability.

For a firm like myself, like ours, you know, we have a lease that we have to sign in a few months for a new space.

And so to have a one-year reauthorization for the program, where we have a business that, you know, has a significant relationship to State work,

is disappointing.

I mean, we'll be fine.

But, you know, I think that what we need, ultimately, is a good program that is rational, that addresses concerns that people have in terms of matching the goals with the availability of talent.

But I think we also need a firm commitment by the State to make opportunities available to all participants in the state.

And for a long time, it wasn't the case, as I mentioned, in terms of what we experienced in 2003, and, certainly, in earlier periods.

I'll say in closing, what needs to be improved?

Certification process does need to be improved. It takes way too long.

You know, people have -- people, you know, say that the application process is complicated.

It is.

When you add the personal net worth component, it just makes it complicated.

I'll say that, again, given the work that I do, we help clients that are looking to get certified in other jurisdictions and with private certifying bodies.

And there's no reason why New York State, you know, has the backlog that it does.

I do think that resources are important.

But I think that, New York City, which, you know, obviously, has a significant program, they've gotten to a place where they can get businesses certified in six to eight weeks.

And I think that, if we look at what New York City can do, there's no reason why that can't be done on the state level.

So, in terms of what should happen, and what works and doesn't works:

The certification process does need addressing.

The -- there does need to be more transparency around how goals are established, but I don't think that's, at all, an insurmountable task.

There does also need be more outreach and capacity building.

I will say, in truly closing, that there is a bill in the Assembly, A-10713, which contemplates a five-year reauthorization of the program.

It contemplates setting up a blue-ribbon commission that would be comprised of state --

members of state agencies and authorities, members of the private sector, et cetera. And that commission could come together and propose reforms that would actually make the program what it should be, which is the strongest program in the nation.

And that bill also has a component, where it encourages a mentor-protege program, or new investment in mentor-protege programs, of $25 million, which would help to improve or build capacity.

So, I really appreciate the opportunity to give this testimony, and if there are any questions, I'm happy to answer any questions.

SENATOR RITCHIE: I just have one question.

Because you're an attorney, and you're a qualified business, do you have any recommendations, specific recommendation, on streamlining the certification process?

SETH BRYANT: Sure.

You know, I think that the biggest challenge in the certification process is the "personal net worth" test.

The "personal net worth" test exists to cause the program to be in compliance with constitutional requirements.

It is not the only test to create a narrow tailoring of the bill.

So I think that, you know, this body and the Assembly could look at a change in terms of the approach of determining whether or not a business is eligible from a personal net worth standpoint.

Aside from that, certification programs, pretty much, are similar.

And so, again, like, there's no -- even with the personal net worth, I don't see any good reason for the State to have the backlog that it has, other than a lack of manpower, or should I say, people-power. Right?

The State really slowed down significantly in the last two or three years. Before that, it wasn't such a slow process, but it was pretty slow.

But the good news is, but there -- early on, there were things that the State did that softened the delay.

What they would do is, if you were pursuing a contract opportunity, and if you had already submitted your certification application, there would be some communication.

A person at DASNY might call the division and ask for a push of the application so that an

up-or-down decision could be made sooner rather than later.

There used to be -- and I'm not sure how much it's the case today, but there used to be a view that, if you had applied for certification, there would be a good-faith kind of belief that you were going to be certified. And so the agency or authority or prime contractor could look at that business and say, yes, we now have a certified MWBE working on this project. They submitted their application on such and such date.

So I think that there are things that can be done now to streamline the process by just taking some administrative actions.

And enabling that kind of communication between the agencies and the division, that might help jump-start some of these slow-moving applications.

But I think -- I also should say, you know, I don't know -- know the number of analysts that the division has looking at these matters, but I would say that, is at a crisis level, and I would say that, you know, the State should really entertain it as such.

And I think, you know, if they have

20 analysts, to add another, you know, 20 or 30 analysts is probably not a huge expenditure, given the State's largess. And it might be a very, you know, well-made investment in a program that clearly works.

SENATOR RITCHIE: Thank you.

SENATOR AKSHAR: Senator Boyle.

SENATOR BOYLE: Yes, thank you very much.

Thank you, Counselor.

And I just want to thank you for your insights, and for coming here today.

If we're able to modify the program to make it more efficient, you actually may be hurting yourself. You'll have fewer people making the phone call to your office.

[Laughter.]

SENATOR BOYLE: But I want to ask about the -- as I said earlier, the New York City MWBE office has come out to Long Island, and they always make the case, Hey, come to us, we're a lot quicker, and then you have reciprocity with the State.

Can you just, real quickly, explain that?

And my question really is: What if -- if they're efficient -- and, obviously, we want to make sure that the companies that are qualified, and

there's no fraud or anything like that -- what if the State just took over the idea of the same system that New York City has, wholesale, and say, well, you're doing it, you're doing a lot quicker, for some reason?

Is it just a matter of personnel, or is it, use -- just, can we use their system?

SETH BRYANT: I mean, I think -- I'm glad you mentioned the reciprocity point, because I think that that -- you know, that was a very good step forward at one point.

But, I think where it falls down is, the difference is in the requirements between the State and the City.

So, again, personal net worth is the difference.

Now, if -- if -- I don't think that -- unless New York -- unless New York State, you know, gets -- you know, changes the "personal net worth" requirement, I don't think that, you know, the reciprocity program, you know, will work, at least not between the State and the City.

Now, it can work in the opposite direction.

If someone gets -- if a business gets certified by the State, and then a reciprocity

should work for the City and Port Authority, et cetera.

But the rub is, trying to go through the process with the City and then, you know, get recognized by the State.

You know, I -- again, I think even with personal net worth, it really is a manpower issue.

And I think that -- I'm not sure if the division has, you know, focused specialists that look at that issue, and that can move the process along and they just develop an expertise in kind of reading finan -- you know, reading, okay, what someone's stock ownership is, and other personal assets, and all of it.

If they don't do that, I would say that that would be probably a smart thing to do.

But I don't see a way where, you know, New York City can just -- its process can overtake the State's process, unless there's a change to the "personal net worth" test.

I hope that answers your question.

SENATOR BOYLE: Thank you.

SENATOR AKSHAR: Senator Sanders.

SENATOR SANDERS: Mr. Chair, I -- well, first, there's so many good ideas have come from

you.

Thank you for coming up, and thank you for the wisdom that you have shared with me over the years.

One of the things that -- that came out of this one is that, one of the hearings that you need to -- we need to do, we may want to get all of the state agencies, and the City, for that matter, and say:

Is there any reason why we don't have one form?

Is there any good reason that -- is there some federal stuff that we're tripping into?

Is there any good reason why we don't have one form for the entire state; one headache instead of twelve, or whatever the number is?

And I know that the state controller -- comptroller is actually exploring this.

So it might be good to start by questioning him and saying, How far have you gotten with this stuff?

And, if he's almost there, we can push him.

But if he's not, then we can find out.

Because, I have never understood why there have been several different forms; waivers, left,

right, and centers, perhaps.

And I -- it doesn't make sense, dollars or cents.

So that's my contribution.

Thanks to Mr. Bryant's contribution.

SENATOR AKSHAR: Anybody else?

Mr. Bryant, thank you very much.

We appreciate you making the trip.

SETH BRYANT: And thank you for the opportunity.

SENATOR AKSHAR: Unshackle Upstate.

Greg, you want us to come to you?

I didn't realize you were -- or at least bring your microphone.

SENATOR SANDERS: That's what happens when you shackle upstate.

GREG BIRYLA: I appreciate your patience.

SENATOR AKSHAR: If you note an increased speed in the way we're taking the testimony, it's only because we have a hard stop of 1:30 this afternoon, so that's why we're moving on.

Greg, thank you very much for being with us.

GREG BIRYLA: Thank you.

SENATOR AKSHAR: The floor is yours.

GREG BIRYLA: Thank you, Senator Akshar;

thank you, Senator Ritchie; thank you, all of the other Senators on the dais today, for addressing this issue.

Obviously, I'm the sixth speaker, or seventh speaker, today, and in the interest of time, and everyone's attention, I don't want to be too redundant.

And I want to be clear that Unshackle Upstate is not a construction-association group. We don't have any attorneys that deal with MWBE issues on a day-to-day basis.

What we are is an education advocacy coalition representing Upstate New York employers.

Our leadership board consists of the Buffalo Niagara Partnership, the Greater Rochester Chamber of Commerce, the Greater Binghamton Chamber of Commerce, the North Country Chamber of Commerce, and The Empire State Chapter of Associated Builders and Contractors who will speak later.

You've heard a lot today from people who know this issue inside and out, and I don't pretend to be able to match their eloquence on the subject.

But what our organization does is, collectively, represent thousands of employers from across Upstate New York, and for 10 years, we have

been the most consistent voice in pursuit of a growing upstate economy and strong upstate communities.

I want to begin by making clear that Unshackle Upstate continues to support a rational and productive minority- and women-owned business enterprise program in New York State.

Our partner chambers and trade groups proudly represent MWBEs among their membership, and they continue to actively support their growth and success, and work every day with them on MWBE issues.

That brings me to my -- the first of two primary points. And, again, you've heard some of these today, but that's probably because they're real issues and everybody seems to be facing them.

On a near weekly basis, we hear stories about the challenges that firms have in getting certified as MWBEs.

Our chamber and association partners field complaints daily and weekly from their members about the significant bureaucratic and administrative red tape in getting certified as such to formally participate in the state's program.

I know all of you, as very constituent-minded

elected officials, probably hear the same.

There are instances, and I won't name names of individual employers, but these are -- these are -- this is a specific example, where it took 18 months of process before an MWBE certification was granted in New York State.

The same firm, doing the same type of work in California, it took four to six weeks.

I don't have the answers to that, and we've discussed that at length.

And I think some of the suggestions and conversation today have maybe gotten us closer.

But it's, obviously, a bureaucratic nightmare somewhere in ESD.

And I think that needs to be an absolute priority of this body here today, and the larger body of the New York State Senate and the New York State Legislature.

And if it means bringing people in from ESD, bringing people in from the Administration, talking with the comptroller's office as was suggested, figuring out if it's funding, figuring out if it's resource allocation, if it's staffing, whatever it is, we're doing something wrong, and that's just become abundantly clear.

And I have made these points on behalf of our memberships to the Governor's Office; to ESD; to the department of labor; to the Legislature, both Houses.

I've gotten universal acknowledgment.

I've never received a clear answer on what the exact holdup is, and what we're really doing to solve it.

So, hopefully, this is the beginning of that process. And I've heard today that we're going to do multiple hearings, or, you're going to do multiple hearings, across the state.

I think that's wonderful, and I would like to see that be a focus of the effort.

This bureaucratic nightmare; that is, getting certified/recertified in the MWBE process, it leads right into next problem I'm going to talk about that you've also heard about today, but, many potentially certifiable MWBE firms simply avoid the process.

They're aware of it, they know it's a nightmare.

The economic benefit to them isn't readily made clear, or it isn't immediately -- they can't contribute the certification immediately to economic advancement, considering how much work it is to get

certified.

This has hurt the capacity.

And, again, I'm speaking from an upstate perspective.

I think a lot of the problems Unshackle Upstate speaks about are statewide issues. They're on the island, they're in the city, they're in the North Country, they're in Western New York. We come at them from an upstate perspective.

But you've heard a lot today about regional capacity, and I think that's a big problem across New York State, and particularly upstate.

We have serious concerns that the administration's arbitrary 30 percent goals are unrealistic.

They can result in projects getting contractors outside of their respective regions, opportunities that would be better suited for local employers; local MWBE employers.

And part of that problem is the first part: We can't get people certified, so we can't ever increase our capacity.

It's a sort of cycle of just futility.

We too believe, like you've heard today, that 30 percent arbitrary standards are not in line with

the Croson judgment from 1989.

I'm not going to go through the tenets of that Croson judgment. I think we've heard a lot about that case today.

Our concerns with the universal standard of 30 percent, even with the waiver process, is that, as -- as determined in Croson, they are far from narrowly tailored.

The insistence on a 30 percent standard regardless of project location ignores demographic reality across New York State and regional capacity to ever meet such a high threshold with local contractors and local employees, improving local economies.

According to New York State-administered website and database, ny.newyorkcontracts.com (sic), which I believe is a link that goes from ESD, there are, roughly, forty-seven, forty-eight hundred MBE firms registered, fifty-three hundred WBE firms.

A simple database query -- and we've heard some of that today -- but a simple database query on this site, using one of the 10 designated economic-development region locations as a search query, clearly indicates that most upstate regions simply can never meet the regional capacity at

present -- or, do not have the regional capacity at present to meet this goal.

I think Senator Little mentioned earlier, in the North County, there's 19 certified MBEs, there are 110 qualified WBEs, according to the last time I searched.

In Mohawk Valley, Senator Amedore's area, has 12 certified MBEs, 96 certified WBEs. The Southern Tier is 30 and 123, respectively.

And in my testimony has a list of all the regions across the state.

This data comes from a State-managed website. I cannot guarantee its accuracy or how often it's updated, but I think it gives a pretty good snapshot of what we're dealing with here.

This has led to work, in our opinion, being contracted -- or, the 30 percent standard has led to work being contracted out of the region -- out of various regions in order to meet State MWBE targets, denying opportunities to local upstate contractors, local upstate M -- M -- or, local potential MBE contractors upstate, and means the taxpayer investment fails to realize its full local economic potential.

This is a major problem for upstate, where

I think everybody on the dais would agree, and, every independent economic indicator indicates, is still a very, very much struggling economy.

New York State is -- continues to set participation goals.

We would like to see some reflection of actual regional capacity in demographics.

New York State's past MWBE program and past iterations must be supported -- have been supported by a properly performed disparity study, as we've heard from today.

We have a lot of issues with the most recent disparity study.

This dispar -- first and foremost, before I get into the contents of the disparity study, it has not been evaluated, adopted, by the Legislature.

The Legislature's elected for a reason on a whole host of things. Their input is valuable. You all are among the closest to your constituents, by nature.

The executive branch and the executive agencies are very large and they're at the top of the chain.

The input that you all bring into the conversations about this, and so many other

subjects, of late, that appear to be happening more and more through executive fiat rather than democratic debate and inclusion and compromise, is a major problem.

And I think we're seeing that again with this issue.

And, we have issues with the outcome of the study.

I think that anybody in the construction or contracting industry, many of which have spoken today, have indicated that 53 percent capacity in New York State, for both prime and subcontractors, it just doesn't seem to be a credible number.

And maybe I'm wrong, and, hopefully, I am wrong, but we haven't been able to see some of the underlying data supported by that study, as been dis -- as has been discussed today.

Unshackle Upstate and its primary partners, we want to see a strong MWBE program in New York State. I mean that from the bottom of my heart.

We want to see one that contributes to a growing upstate economy, one that encourages the certification of MWBE firms, one that helps increase our regional capacity so that we can meet realistic goals.

But any responsible MWBE program must acknowledge and reflect some of the regional capacity differences that we've discussed.

And, lastly, what, at the end of the day, is the point of my MWBE program?

It's to improve the economic prospects of a certain class of employer.

And that's -- that is a laudable goal, and I think the program has a lot of merit, but, what's the biggest obstacle to opportunity for any employer in the state, MWBEs included, particularly upstate?

It -- it's our overall state economy.

We have an economy in New York State that, by all metrics, is in the bottom percentile across the country, compared to all 50 states.

We've heard:

49th in business climate;

We have the highest property taxes in the country;

We continue to have high corporate and personal income taxes;

We have high wireless taxes.

All of these things add up, and at the end of the day, add up to being the single-greatest

impediment to economic growth and entry into the economy, for any new business, small business, entrepreneur, MWBE included.

And I know that's not the focus of our conversation today, but I would be remiss if I didn't bring it up, and didn't -- and didn't at least interject it into the larger conversation we're having today.

So, again, I thank you all for this opportunity.

I know I covered some ground that -- that's been discussed before. I think it is important.

I'm glad I got the opportunity to share these opinions and these insights, and I'll take any questions.

SENATOR AKSHAR: Senator Sanders.

SENATOR SANDERS: Thank you.

GREG BIRYLA: Thank you all.

SENATOR AKSHAR: Greg, thank you very much. I hope you feel better.

GREG BIRYLA: Thank you.

SENATOR SANDERS: Take your time.

SENATOR AKSHAR: Mr. Reed, Mr. Porter.

GREG BIRYLA: It's the only option I have.

PHIL REED: I want to thank you for your

time.

My name is Phil Reed, executive director for the Northern New York Builders Exchange.

I'm joined with Bob Porter, and DC Builders, who's also on our board of directors.

And I want to thank you for your time.

And we're going to try not to be redundant and cover ground.

I will say I want to thank you for your time.

Our senator, Senator Ritchie, has been in discussions with us, and has taken an active role in this discussion for the last year.

I want to thank you for that.

I'd like to preface this by someone that Bob and I both have had to swing hammers to put food on the table. So, me, not so much the last 10 years, but, Bob.

But it was encouraging to me that nobody -- none of our members -- we represent over 200 construction-related firms throughout the North County, and we're part of the BIE -- but, I've never heard anybody say "stop the program."

They've always wanted inclusion, and so that's encouraging to me.

I know somewhat of the struggle.

I'm a -- I'm a parent of -- one of my children has disabilities. A lot of times you have to push some elbows out to get noticed. And I understand how that works.

But what we have to understand, too, is what our struggles are in the North County.

And, we're just going to give you a couple of anecdotal stories, and then yield our time to other people.

I would like to first talk about a project that we've had going on, and Senator Ritchie probably is fully aware of this, is the transitional living project in Ogdensburg, New York.

So we have a company called Aubertine and Currier, who's the engineering and architectural firm.

This is -- they're on their fourth time bidding the project.

Their current GC has dropped out of the project. He cites that:

"The project in Ogdensburg, we've been fighting to get off the ground for three years, is unlikely to take place now. So much time has passed since it was bid that we've lost the few MWBE contractors that we had.

"We've washed our hands of this project out of frustration, and have no intentions of bidding any other projects with requirements until such time as the goals are brought into line with the supply of contractors in the area."

MBE -- MWBE's contractors.

So, he has nothing negative to say about the program, but, he spent considerable time and effort, and it's, just, there's some incidental costs with that.

So meeting with Aubertine and Currier, they -- they are finding every way possible to try and get this project off the ground.

And I'll remind you that transitional living services is an important piece of our social network in northern New York which helps people with -- that have fallen on hard times.

She just wanted me to cite that, in the MBE directory, there's 1,406 MBEs, 49 in the 315 Area Code, which is quite substantial.

This last go-round, they've e-mailed 63 MBE contractors, with no response.

Now they have spent $300 on adverti -- this last go-around, approximately $500 in advertising. They haven't even got the contracts in motion yet.

So, that's some of the frustration.

She showed me some of the worksheets, where people have spent considerable time trying to make every good-faith effort to get to the fulfillment.

And, when this last contractor said, the framer he had lined up, which was not from the area, backed out of the project and won't answer the phone calls.

So this is a typical thing in northern New York.

I know there's a lot of cows between us and New York City, but it's kind of an isolated area.

And so we -- we really embrace the concept, but maybe the cart was put before the horse.

We don't have the pool, or people don't want to actually come up and work in northern New York.

So, I do have one other -- one other piece of correspondence from one of our members, from Northern Tier Contracting, which is in your district, Senator, St. Lawrence County.

He's a general contractor from Gouverneur, St. Lawrence County.

"We employ 44 full-time employees and generate $60 million in construction-contract revenue each year. 90 percent of our work is for

northern" -- or, "is for NYS entities in the St. Lawrence and Jefferson areas.

"As a prime contractor, I'm obligated to break down the scopes of our awarded projects to find opportunities for MWBE entities to participate in each project. In many cases, this involves awarding subcontracts to MWBE companies for work that my employees could have performed.

"As a result, I'm forced to layoff 7 percent of my existing local employees, or not hire new local employees.

"This has a significant impact on employment in the North County that, historically, suffers from high unemployment."

And he goes on to say he fully supports the program, but it's not practical or sustainable for many of our companies.

And I will defer to Mr. Porter about a similar project he may be working on.

ROBERT PORTER: Yes, so, I'm bidding a project right now for one of the parks, and it just happens the scope of the project is concrete work, which we do ourselves. And then there's a little bit of fence work.

So, I found a fence guy that will bid it with

me.

I can't meet the MBE goals, but I can get more than 30 percent WBE by a hair.

But what it does is, I don't -- I haven't called the four guys that are local that do fencing, to bid on it, because I can't hire them. So, there's no point in me wasting their time, bidding on that job.

The number I got from the WBE downstate, who's a good reputable company, I have no problem using them, seems reasonable, but I don't even know, because I'm not getting another number.

I've got to -- I'm going to carry that number, and sink a ship; sink or swim with them.

I was a Clarkson graduate, it's a school up north, engineering degree.

Back to the construction market.

You know, I had 40 to 50 kids in all of my classes. There were two girls in there.

I know there's 35, 40 percent in St. Lawrence County are woman businesses for the -- or, are women for the disparity study, but, many of them don't go into the construction business. They don't want any part of it.

Similar to the trades nowadays, I don't know

how -- you know, I can't talk my daughter into becoming a block layer.

Right now, the masons union is -- all the men are draining out of it because they're all retiring out, and it's a dying trade.

It's like we're trying to tailor this program around one industry. Maybe, broad brush, the state could do 30 percent easily.

But, to pin it on one industry, like, say, the construction market, it's just -- it's, really -- it's unfair, I guess, in our opinion, for our area.

Even less so, you know, the disparity study, you know, I've taken this right out of their disparity study, and it's -- there's less than 5 percent minorities in the North County region.

I've got a friend of mine whose wife owns a business that was handed down to her from her father. She's full-blooded Indian. She's been 18 months trying to get certified.

And, all you got to do is walk up and talk to her, and you -- you know, the business handed from father to daughter, and, there's no -- there's no argument. I mean, they live on the reservation.

But, same thing; they don't want to come and

work in Alex Bay.

They're from the Massena Reservation area, and they've got a small window where they want to work and where they're comfortable with their employees.

And, you know, to try to bring in, you know, a fence guy is easy, because you can, you know, load up a vehicle, and he can drive 200 miles and put fence in for, you know, a pretty similar price to somebody that's, you know, around the block.

He's burning an extra tank of gas, and maybe paying for some hotel rooms, but, it's not going to drive the price way up.

But, we're -- we're constantly at the point, if we are bidding public work, and the goal is 30 percent, and I can meet 8 percent of it legitimately, we're having to mark our price up to cover the difference, knowing that we're going to have to shop it out, and try to buy it out after the fact.

And, it's just -- it's not really right that -- you know, that I'm not be able to -- you know, I'm not able to go to the low bidder, or even go to a sub that I don't have any background on.

You know, it makes it hard for me when, you

know, our bond is up, our money is up. Personally, we're guaranteeing that this guy is going to perform, and I don't know this guy from Adam.

So it makes it very hard on public work.

The other point I guess I want to make on public work, I don't know how we fix it or make it better, honestly, short of getting more minorities and girls to go into the engineering, and, 20 years from now, then they could own a business.

You know, they're -- I look at public work like the NFL.

You're not going to go to a Pop Warner game and pick up a hot quarterback who's 9 years old, and say, You're throwing for the Cowboys on Sunday.

Getting into public work is the most difficult of all construction work.

You're really not even helping a lot of these start-up guys by handing them public work because it is so hard.

You know, maybe there's an easier way to do it through, start them in the residential end, or maybe the maintenance end, where they can work the way up through.

But, you know, to hand a -- hand a start-up mason, let's say, you know, a big commercial block

job, with dormitory authority inspectors looking over their shoulders, and, you know, independent testing agencies, and all this other special inspections, it's -- you're setting them up to fail, you know, in a lot of cases.

PHIL REED: But that last project that you did talk to, that you're getting a bid on for the fence contractor, what was his response?

Was -- we -- he doesn't even know if he could -- he's a -- what's his backlog?

ROBERT PORTER: Well, so, yeah, that's -- I guess that's the other thing.

He's -- he can't do the work this year.

If the work's got to be done this year, then don't even give me a -- or, you know, if we can push the work off till next summer, then he's got backlog available to do it.

So, it may fall that he can do the work next summer, just because it takes the parks so long to award their jobs, that it will push into winter, and the job will shut down anyway.

But, you know, that's something else we're juggling.

You know, I didn't even submit the bid on this yet. It's due next Tuesday.

So...

GREG BIRYLA: So -- and I think, too, that, again, we're such an isolated region, it's difficult to draw people to come up.

And I was a project manager for a construction company at one point, and -- that was traveled the country.

And -- but to pay per diem and travel, it just pushes the price, which taxpayers are going to end up paying for.

But it also -- you know, we are somewhat isolated up in northern New York, but we have companies that have been in business for generations. And they don't get a -- they don't even get a chance to look at this work.

They come in, they've contributed to their communities. They're upstanding citizens. They are great corporate citizens. But they don't even get a shot at it because, they don't qualify.

For them to be -- it's hard enough to do business in New York.

I mean, workman's (sic) compensation rates, try and be a roofer, and look at your insurance rates.

So, it's even tougher, I think, when you get

up further and further away from everything, and, to not be able to just get a piece of the work, when you've been paying taxes and been a hard-working company, it -- they somewhat feel slighted about that.

And I might be putting that nice, Senator, because you hear a lot of it also.

So -- but we really appreciate your time.

And we won't go over some of the remedies that some people have already offered.

We just wanted to give you a little taste of what happens by the Canadian border in northern New York.

So, we really appreciate your time.

If you have any questions, we'll be happy to answer them, do our best to answer them.

SENATOR RITCHIE: Well, I want to thank you for coming down and sharing your perspective, because I just want to make sure that people hear, you know, we live in a pretty rural area and pretty far away. And, though everyone is supportive of the program, the realities of making it work in the North County are -- are difficult.

You're mentioning once again the list.

And, another issue popped up that, not only

is the list not big enough, and it's not updated, and some of those contractors don't participate, the few remaining contractors that are on the list have so many requests for so many other projects out there, they can't keep up.

So, you know, there are a number of issues that you brought up that I've heard.

You know, meeting with you and your association in the past, that, you know, it's very frustrating that, given the economics of our area, that anytime any -- any business, or any project, has to be brought in, a company from outside the area, when there are so many people looking for work, is certainly a concern.

So, thank you for coming, and --

PHIL REED: Thank you.

And I really think it's a fantastic idea that you're going to do this in other parts.

And I would really appreciate it if you came up our way, and, we would take you around, and show you some of the beautiful areas of The Thousand Islands area, and look -- and you can see firsthand, if you drive, how many open fields are up there.

And it's -- there is difficulty.

I might just say one thing, maybe this starts

at school, you know, in the vocational programs, and get young people.

I know that, I have three sons, and the push was to push them all to college.

Maybe that doesn't work for everybody.

But the vocational programs are a great steppingstone to getting people involved.

And like Bob said, you know, you got to pick up a hammer, you got to pound some nails.

ROBERT PORTER: Yeah, we have BOCES in our area, which is great for that.

PHIL REED: And we should encourage --

ROBERT PORTER: That's a big plus.

PHIL REED: -- young men and women of minorities to -- to -- that it's a -- we should welcome them, and show them that there's a rewarding career.

You know, a carpenter, look, what's -- what's a mason going to be making, when everybody -- when they're in high demand?

You know, people made fun of car mechanics. Now they're working on BMWs, making more than a lot of us.

So I think it starts with us too, to encourage young people that this is a trade for

everybody. This is a welcoming thing.

And I think -- I was encouraged to hear everybody today saying, I know we have difference -- difficulties, but everybody wants the same goal: Everybody wants inclusion, and push this thing forward.

It's best for all New Yorkers if we all work together with that.

So, thank you again.

And, I hope this goes up towards our way, and I personally invite you out.

SENATOR AKSHAR: Well, Phil, we're definitely coming your way. Senator Ritchie insisted upon it.

And I promised Senator Sanders I would show him a clean river.

PHIL REED: Yes.

SENATOR AKSHAR: So we'll show him -- we'll show him the St. Lawrence.

PHIL REED: Yes, we will.

[Laughter.]

PHIL REED: We'll give you a first-hand tour of The Thousand Islands.

SENATOR AKSHAR: Senator Little.

PHIL REED: Thank you.

SENATOR LITTLE: Yeah, thank you so much.

I have the eastern part of the North County from Senator Ritchie.

But, you really put reality on what we're trying to say, and tell people.

I'm convinced that what the North County needs the most is more year-round residents, and you're not going to have them unless they have jobs.

And unless we make some changes to this program, we are actually taking jobs and giving them to other areas rather than the people and the businesses that exist in our area.

So, you mentioned the waiver program, and -- but more than that, the requirement, that before you can get a waiver, you have to prove that you have tried your best to find businesses.

And I heard -- we heard from one person that some of the New York City and downstate businesses are saying, Stop calling us. We are not coming up north to do this work. We have all the work we can handle down here.

And for your job to say, Oh, we can put up the fence next year, it's unacceptable.

We have people in the North County that can do fencing.

That's why we need an easier waiver program.

We need regional goals, adjustable.

And, hopefully, with better certification, simpler certification, we will grow the minority- and women-owned businesses that we have, and this will be a problem of the past, and we'll be able to correct it.

But thank you for being here.

PHIL REED: Thank you.

ROBERT PORTER: Thank you.

SENATOR AKSHAR: Thank you, gentlemen.

Okay. We're going to do something a little bit different here, just in the -- for the sake of time.

Can I have Brian, Amy, and Louis, and Donald come down to testify next. And then we'll have Campbell, Tom, and -- John, and Dominic wrap the day up.

Thank you.

SENATOR SANDERS: Mr. Chair, Mr. Porter before spoke of, they don't go to Pop Warner for the Cowboys.

Sometimes the Cowboys play like they did go to Pop Warner.

I was just noticing that.

SENATOR AKSHAR: Amy, why don't we have you

start.

AMY CRISS: All right.

First of all, thank you, all, for being here and listening to us.

My name is Amy Criss. I am the director of women-business enterprise and supply diversity at 84 Lumber Company.

I've been with the company for 17 years, and my responsibilities currently surround supplier diversity, and WBE business development.

So that's business 84 Lumber wouldn't have if we weren't a certified woman-owned business, which is also business we don't have in New York because we're no longer a certified woman-owned business.

I am here to testify about the importance of Article 15-A.

We believe in it wholeheartedly, but we believe in the creation of a certification pathway to allow MWBEs to reach their full capacity.

We support the extension of 15-A for five years.

We propose a solution for this.

We recommend a tiered process for this program, where the first opportunity would go to small diverse businesses.

The second opportunity would go to large diverse businesses that are no longer in the program, but that are giving back; that have a supplier diversity program, mentor-protege, joint ventures, training programs.

There's no business that's going to help a small diverse business grow more than a large diverse business that has been there and faced the challenges.

We think this is a great steppingstone.

You hear of diverse businesses that, once they graduate out of the program, what got them there is no longer there, and their business shrinks.

So we think this is a great opportunity for everybody to win.

84 Lumber is a building-material supplier.

We have -- we're owned by Maggie Hardy Magerko.

We have 23 stores in New York State, majority upstate. We have two located in Long Island.

During the housing-market crash of 2009, we had to navigate extreme hardship, and through that, we became WBE-certified.

In 2010, we applied for certification through

ESD in New York, and we received our certification in 2011.

In 2010, legislation was introduced, and passed, and signed by the Governor, to add a personal net worth and small-business cap.

So we went to recertify, and we were declined because of personal net worth.

We received a denial letter. Then we asked for a provisional waiver due to the way our business works.

We own all our own property, we own all our own equipment, the inventory. You're way over the personal net worth just in one store, let alone 23 upstate.

When -- it -- we were finally denied the provisional waiver in 2016. Unfortunately, we had to close one of our stores, which is in Watertown, unfortunately, in your area, which cost employment and multiple things in business.

We -- we have trucking companies that do all of our deliveries, so that trucking company no longer was there; they no longer needed employment there.

So it had a big trickle-down effect.

The pizza shops didn't need to deliver as

much pizza to 84 Lumber.

So, nobody wants to see loss of business, but especially in Upstate New York.

We are consistently, still yet -- that was 2015-2016 -- I get calls every week from our customers and our contractors, saying: Are you certified? Why aren't you certified? And you're causing us extreme hardship because you're aren't.

There was a university upstate that needed to build, like, a shed/a building, and we had provided -- we had provided a bid to them.

And they called me and said, I can't find you on the list. Why can't I find you on the list?

And I said, Well, we're no longer certified.

And they said: Your bid is considerably less than everybody else's. Plus, now, I have to go almost 100 miles to use the next-lowest bid, and it's going to cost me almost double what it would have cost me to build this building if we could have used you, but we can't.

So we lost that business.

The business was lost from that area in Upstate New York.

It cost the State and the university a lot more money to build the building. And it seemed

like the lose-lose for everyone.

So, we had a bill last year -- thank you, Senator Ritchie -- to remove the personal net worth. And that had bipartisan support, passed through both Houses, but, unfortunately, it was vetoed by the Governor.

So we listened, and we are coming back this year with supporting language to -- related to the personal net worth.

Right now, it's A-10744, introduced by Assembly Government Operations, Chair People Stokes. And the purpose of this legislation is to provide a pathway for minority- and women-owned businesses that have graduated out of the program, or are too large to participate in the program, but are still minority- and women-owned businesses.

With this program, they are allowed to be counted after you have exhausted all your small diverse businesses, which is limited numbers in upstate. And, you're allowed to look at these groups of businesses, that are large diverse businesses, before granting a provisional waiver, but these businesses have to be giving back.

So they have to have a supplier diversity program or a training program, mentor program; a lot

of things that we've heard here.

I think it's a win-win for everybody, because we're helping the small businesses grow. We're giving them help through -- to learn their capacity.

We're helping large diverse businesses that have graduated out of the program continue to grow in this program as long as they're willing to give back.

And I think we're helping the areas that are having problems.

I mean, we have 23 stores, 21 of them are upstate, and we're losing business all the time in those stores.

We've lost millions and millions of dollars worth of business a year because we've lost our certification, which means, employment; we don't need as many people, we may not need as many stores.

So we're asking -- we're asking for your support on this.

There's a few examples, but one of them is a pre-apprenticeship program that we're using right now in our company, which we help underemployed people that may have made some bad decisions or can't find employment.

And we are -- we brought a lady, her name was

Jasmine Carter. I think a couple of you met her. Very impressive.

She had made some bad decisions. Didn't know what she was going to do with her life. Nobody wanted to hire her.

We bring her into this pre-apprenticeship. You need no knowledge in construction whatsoever.

But there's a labor shortage, so we're willing to train people.

And we put them through hard- and soft-skills training. We get them OSHA 10 training, their OSHA 10 certificate. We put them with our contractors on the job sites and we help them learn construction.

We also let them learn about the different jobs in our stores. Maybe it's inventory and material moving, or management.

And, after six months of being in this program, they can determine what they want to do.

Maggie will pay for a full-fledged apprenticeship program for them if they decide they want to be in construction, and we'll guarantee them full-time employment in the industry.

They all have -- through the six-month program, they have full-time employment, they have

benefits, they have 401(k); they have everything everybody else does.

And then if they go in this apprenticeship program, she pays for it, and they will eventually become a carpenter, you know, and they'll be able to be out there. And they may be working for our contractors. They may be a carpenter and start their own business.

We believe it's a feeding program.

We're able to do this because we're a large MWBE, we're a large WBE. And these are some of the things that we can bring back to this program if this bill is moved through.

We believe there's -- we believe there's no other type of business that can support these businesses than a large helping a small.

We hope that the Senate Republican Conference supports A-1074 (sic) by supporting the bill and passing it before end of session and making this law in New York, so we can all get back to great, good business and keep growing New York.

Happy to answer any questions.

SENATOR AKSHAR: All right. Let's take the testimony from the other gentlemen, and then we'll ask questions.

Mr. Coletti.

LOUIS COLETTI: Okay.

SENATOR AKSHAR: Thank you.

LOUIS COLETTI: I first want to thank the panel for giving us the opportunity.

I really think you're on to something big.

I've been an advocate for MWBE programs for over 21 years, and it's like I've talked to myself all the time.

But I think that you've got people talking to each other, which is something that we did not have throughout my career.

What I would like to do today, in the essence of time, is tell you a little bit about my organization, a little bit about me, because most of you are from upstate, and then I'm going to go through some very specific recommendations, and I would ask you to consider in terms of moving any changes forward.

The Building Trades Employers Association of New York City represents 27 contractor associations and over 1100 companies. Almost 10 percent of our members are MWBE contractors. We all have collective bargaining agreements.

Myself, I've been in the industry for 31 --

in terms of construction volume, my contractors are doing 35 to 42 billion dollars worth of work in New York City, both public and private projects.

As to myself, I have been here for 21 years. I worked in the private sector at a large construction management company, where part of my responsibility was to -- MWBE involvement.

I helped, and some of the work that I did, we ran successful MWBE programs for the Atlanta Olympics out in Los Angeles City Hall, the Grand Central Station, and four or five state contracts.

So I believe Senator Sanders will attest to the fact that I have a very strong working relationship with the MWBE community.

New York, obviously, is very different than the rest of the state.

We did something that I think -- we've submitted to you, I'm not going to go into it in depth -- we did the first study of its kind in New York City. It was called a "capacity study," not a disparity study.

This study measured actual contract awards, by dollar volume, by minority status, and gender, so we can see where -- where we fell based on actual contractor volume.

To no one's surprise, Dr. Thomas Boston came up with a conclusion, that he didn't see how New York City was going to hit the 30 percent goal.

So, if we can't hit it in New York City, I empathize with the problems that you have in your own districts.

We didn't quarrel with the 30 percent goal.

We then put up -- I have a minority and women leadership council.

We came up with this -- a book, which I think we've submitted to you, which includes a number of recommendations on how to improve and strengthen the program.

You know, there's been a lot of conversation today, and -- about goals, and studies.

And I think that what you have to keep in the back of your mind, you hit -- you hit the nail on the head right at the beginning of the hearing: It's all about capacity.

That's what it's about.

How do we build capacity so that, some day, we may be able to achieve a 30 percent goal?

And I think that's the challenge for us to do, and try to meet.

And the program needs -- in my opinion, it's

had limited success, wouldn't deny it, but it's like building -- trying to build a 30-story building when you put a foundation up for 15 stories.

There has to be a stronger foundation as we move forward, and I'll start right from the beginning.

Senator Little, you asked a question about the certification process.

Whether it's the cities or the states, just throw it out and start over again. Don't try to fix it, because you'll spend all of your time fixing it.

Okay. There -- if -- if, at worst, there should only be two certification -- uniform certification applications:

One for New York City if they don't want to cooperate;

And one for the state, that covers all your local jurisdictions, the port authority, the state agencies at work in New York State.

One.

You've heard the testimony, it is a horrendous process.

What no one has said here, that I think is really devastating for this program, is while they're waiting the 8 months for the

recertification, you can't bid any other work, so they lose the opportunity.

At least, okay, make your decision, but let me at least compete for the work.

No.

So the certifi -- and in this report, if you'll look at this section, there is a very extensive discussion about the City certification process, which I'm sure is very similar to the State's, because one of the problems is, a lot of the data that's collected, the State's in a very difficult position.

I understand an MWBE doesn't want to give certain proprietary data to a public entity, because that goes on the website, it becomes public information.

But if you want one of my prime contractors to hire someone they don't know, that information there doesn't always lead us to believe, I'm going to call up this MWBE contractor I don't know because I have a goal here.

So we don't use it.

We don't use it.

It's not a good, good source of information.

So what has happened is, all the major

contractors end up doing all of this process, all for each of their own individual firms.

And you know who that costs?

The taxpayer, because that cost is then included in the cost of the bid for that job. It has to be.

I have to take exception to my good friend Renee Saxson (sic), very close relationship.

But to hear her sit here and say that my prime contractors are -- are -- they can find MWBs if they can't, is nothing but utter nonsense.

Okay?

I can tell you, on some major billion-dollar projects in New York City, my contractors have told me they are spending $3 million to try to identify MWB contractors.

And here's how the process goes:

You have a big event, 400 people show up. Half of them are suppliers.

In New York City, we -- it doesn't have a supplier, but this is a state project so you can count them.

The next meeting they set up, they identify all the contractors and they have a pre-bid conference. Well, that number now goes, from 300,

to 100.

Then after the pre-bid conference, they then call a second meeting to come in and look at the drawings. Now you're down to 50.

Now it's time to submit the bid. If you get 20 bids, you're lucky.

And that could be for a whole host of reasons. The MWBE is busy. They decide that's not the kind of job they want to do.

We have a different problem in New York City.

For the MWBEs who are successful, we're actually finding that their prices are 10 percent higher than the other bids we solicit, because they know the pool is small, so they figure they can charge what they want.

And in cases when it's a low-bid situation, it's another reason why you don't get to the goal, because my contractor, who's bid a job with a hard-dollar number, says, I can't take your number with 10 percent. I have to take the low number.

So it's -- it's -- the time now is for reform.

I'm getting too old. I want to see this happen before I retire.

So I want to go over some things are very,

very specific in terms of what you can do as a legislative body, okay, and I agree with other speakers.

According to the law, every agency on every project is supposed to share the methodology for how they came up with the goal.

You heard the attorney, the previous speaker, is the only person that I heard use the term "aspirational goal."

He's the only one that's correct.

You read Croson versus Richmond, Virgina, goals are aspirational.

Not mandated.

Aspirational.

The way the State is running the program, they're not aspirational. They're mandatory.

And if we don't find a way to solve this, we're going to end up down a path, where I believe -- the answer to Senator Sanders' question -- I believe Philadelphia and New Jersey had lawsuits, and that were completely thrown out because of many of the same administrative requirements that the State has.

Nobody wants to do that. Nobody.

So they have to do that.

And they should also fix the goal based on what the actual hard cost of construction is.

In too many instances, we've said, well, this is 100-million-dollar project, so the goal is 30 percent of $100 million.

Well, that's the acquisition; the land, that's the design cost.

What's the actual hard construction cost?

Sixty?

Then it should be the percentage of the hard construction costs, not the total project.

And establish uniform procedures for clearly documenting what "best efforts" are.

And if the best-effort documentation is met, then there should be an automatic waiver. Period.

And then, please, please, eliminate all the language that exists, and that existed in the budget language: The liquidated damages, and poor performance evaluations when you can't achieve the goals.

They are blatantly illegal.

Blatantly.

Again, rescind all the provisions which call for criminal penalties.

There was just the case in the port authority

of New York and New Jersey, where the steel contractor who provided all the steel for Towers 1 and 2, and had an MWB partner, were convicted by a jury of MWBE fraud.

The MWBE pled guilty, acknowledged that he really didn't do any work.

The jury found both parties -- well, the one party guilty, and the judge threw it, the criminal conviction, out of court, saying that MWBE goals are not criminal violations, and, in the contract of the port authority, he followed every step along the way.

He documented his best efforts, the authority was provided the service it contracted for, and threw the case out.

Criminal case.

So let's not go down that road.

I talked about certify -- certifications, so I'll go on to the last one in interest of time -- the last couple of them.

This one I know will be difficult.

You have to reform the 240 scaffold law.

Insurance costs in this state, okay, represent 9 to 10 percent of the hard cost of construction.

When my contractors bid in New Jersey, Connecticut, and anywhere else, it's 2 to 3 percent.

MWBE contractors either cannot even get general liability insurance or can't afford it.

In the absence of that happening, then I would urge the State to establish a New York State general liability insurance company firm for small businesses.

You can't do it based on race, but you can do it for small businesses.

For as many of the large contractors that I represent, 65 percent of my members are small businesses.

Construction is a small-business industry, so they're all suffering with that.

Number two: The State has a bonding program and the State has a loan program.

They need to get more banks involved.

They need to bring the surety companies to the table.

You know, helping an MWBE apply for a surety bond is a very positive thing to do.

But then, for whatever reason, they don't get the surety bond, you haven't accomplished anything.

So you need that kind of conversation, and

getting more banks to participate in that.

Here's something that the Legislature did two years ago, that I would encourage you to do again:

Two years ago you passed a law, and the Governor signed it, establishing a small-business program for the MTA to award contracts of $400,000 and below directly to small businesses, and waive the bonding.

You should -- my suggestion to you is, you should do it for both all city and state agencies.

Give them an opportunity to be a prime contractor.

Waive the bonding. Let them build up their experience so they can be -- grow and grow and grow.

Denise Richardson touched on this, and I don't know how the Legislature does this: Cash flow is the life and death of any contractor, more so if you're an MWB contractor.

I have been in this business for 31 years. I have never seen the public change-order process, payment process, as lousy as it is today in any city agency or any state agency.

Well, you're supposed to pay -- you passed the law, you're supposed to pay in 30 days.

Well, now you get into the argument:

Well, when does the clock start?

Oh, I didn't get a chance to look at it yet, so the invoice is on my desk, so the 30 days doesn't start till I look at it.

If you're an MWBE contractor, you're bankrupt by the time you get it.

And I wish that the agencies would stop asking the general contractors to get in the banking business.

We're not bankers.

We're contractors. We shouldn't be floating loans.

There was a discussion today about the regional programs.

And I would highly suggest to you that you create regional capacity-building programs, and put more than $25 million on the table to finance it.

So far, over the years, these programs started out as a governmental public policy.

And as the requirements grew, rather than putting more money on the table to be a partner, all you did was shift all the burden to the private sector.

We have to be a partner.

And for those prime contractors that

participate in that, they should get 10-points credit toward the MWBE goal, and I'll tell you why.

When you go -- you heard a lot of conversation today about mentor programs?

If you don't do it through a third party, I'll tell you the experience we had in New York City.

And you heard a story here, about a woman contractor who needed a piece of equipment. The equipment was on the site, wasn't being used.

And the prime said, I can't loan it to you, but I can loan it to that White contractor.

In New York City we have had every major construction manager be called in between either the Manhattan District Attorney or the federal Brooklyn prosecutor.

I had Loretta Lynch in my office, telling me, they're charging them with MWBE fraud because we tried to provide assistance to a company on a job, which has been the tradition of this industry for 100 years. Contractors have always helped their subcontractors grow.

They did it, they got hauled in. Well, you either pay this $5 million fine or we're going to file criminal charges.

So, they paid the fine.

Do you think the federal government put any of the money back in the MWB programs?

No. They got awards for bringing in the most money.

That is not going to change. Okay?

The models that have to be changed are the third party, the kind of programs that Michael Garner has set up, both at the school construction authority, and now at the MTA, where there are pre-qualified experts, whether they be financial, whether it be construction managers, attorneys.

And if an MWBE company is struggling on the job, the prime goes to the agency and says, Look, that company needs some help in doing its paperwork.

And you get an independent third party to help them out, because you cannot get -- if the company is working -- if the subcontractor is -- MWB's working directly for the GC, they cannot, and will not, they're not going to take the risk of helping them.

And if we don't find a way to provide that technical assistance, they're not going to grow.

And I think you'll be happy to hear, that's

it.

Now, I'm going close it by one of my famous sayings that you'll see in almost anything I talk about with MWBE.

That, in closing, I am reminded of a saying by Confucius from 500 BC.

"When goals can't be reached, don't adjust the goals, adjust the action steps."

And I think -- just by having this hearing, I think we're right at the precipice of adjusting the action steps.

And so I thank you for the opportunity.

I hope I didn't suck up all your time, Brian.

But please consider us a resource, because the problems you're having in your rural districts are really not that different than in New York City.

It's -- it's -- it's a -- it's a matter of scale, but they're the same types of problems.

So, thank you.

SENATOR AKSHAR: Thank you, Mr. Coletti.

Mr. Sampson.

BRIAN SAMPSON: So I was going to start off by saying good morning, but it's now afternoon.

[Laughter.]

BRIAN SAMPSON: So, I appreciate that.

And I'm not going to spend a whole lot of time. We have testimony that you can read afterwards.

We support the MWBE program as an association. We represent over 450, what we consider, merit-shop contractors across the state of New York.

Those are contractors who believe that their bid should be awarded based on the merit of the bid, not through any undue influence.

In a nutshell, that's what we look for. It's a free-enterprise system.

And our contractors, over the years, have done a great deal of mentoring with MWBE firms, to help them grow, to help them get into doing a lot of this work.

And I think, overall, you know, we support what's going on here. And I think there's some things that can be done to make this process a little bit better.

I think you've heard some of the recommendations today.

We do recommend that a new disparity study be conducted in the state of New York.

The one that was released, I think, to

Mike Elmendorf's point, dropped on, you know, the Friday before the 4th of July, was probably an inopportune time, and, more likely, the result of what was in study.

So we think a new one needs to be done.

We do agree that, in the pre-bid documents, the goals for that project should be shared with the contractor so they can consider that time, and know what the standards are that they have to meet.

I think that that is an absolute wonderful thing.

Regional disparity has to be done.

I think to Lou's point, if 30 percent can't be reached in New York City, there's absolutely no way they're going to do it in the Southern Tier and there's no way they're going to do it in the North County.

So you have to have some capacity for regional disparity.

And then the other thing we would ask that maybe be considered is: What is the diversity of the bidding contractor and their suppliers? So what does their workforce look like?

If part of the goal of an MWBE program is to get minorities employment, then that should be

considered.

So what is their employment, and can that be considered towards reaching whatever the ultimate goal would be?

So we think those are some very positive steps that we can take in this process.

But we also believe that this issue can't be looked at simply in a vacuum.

Construction is not a single-issue industry, so we have to look at some of the other challenges that New York faces and puts in front of our contractors.

We survey our members every year.

MWB comes up as the number-one issue;

Second issue that comes up are project labor agreements;

Third thing that comes one is the scaffold law;

And the fourth thing that comes up is workers' compensation reform.

And we'd like to thank you for the work that did you last year on workers' comp. We've seen some very positive numbers coming out. We're looking to see what that will do for those rates.

But when you look at those issues, we have to

look at them in the context of this MWBE.

When you consider issues like annualization, "annualization" is an interpretation of a regulation that's at the department of labor when an employee works public work and private work.

DOL has the authority to come in and audit those records. And many times what they'll do is, they will say to that contractor, This employee worked most of their time on public work, and not enough of their time on private work; therefore, you should apply public wages and benefits to the private work.

I can share with you two examples of companies that have been put out of business in the state of New York because of annualization, one in Western New York and one in Long Island.

So if we're going to -- and these are both MWBE firms.

So if we're gonna push for an MWBE expansion, we have to fix the annualization issue.

We have to fix project labor agreements.

This governor is a big fan of project labor agreements.

We have a philosophical problem with them.

But I think, if you look at that 2016

disparity study, there are comment after comment after comment of minority firms, female-owned firms, who said that they will not bid public work when there is a project labor agreement on it.

We have an example in my hometown of a Jamaican-owned company. He has an entire workforce of Jamaicans that he has brought to this country that are working.

He cannot, and will not, bid a project-labor-agreement job because he cannot put his employees to work on that job.

So if we're going to look at public work, let's look at it in a fair, rational way. Perhaps you allow a project to be bid with and without a PLA.

That's an opportunity to level that playing field to make it a little bit more competitive.

And I would ask you, as a legislative body, currently, the office of general services has an RFP out, to do five years of PLA studies, to identify contractors to do that.

We have a significant issue with that RFP, in that one of the qualifying -- the main qualifying point for those potential bidders is that they have to have had a PLA study accepted and implemented.

So you're taking a pool of potential bidders and you're narrowing it down to people that have supported, through a PLA study, the implementation of PLAs.

That is a dramatic and drastic overreach by OGS, and it has to be addressed.

And I'll close with: Please look at these issues in totality.

Not any one issue will make or break what's going to happen in this industry, and we may have philosophical differences on what is right and what is wrong.

But at the end of the day, we have an obligation to put projects up, that are done with the best value, with the best quality, and done at the best rate for the taxpayers.

And if we want MWBE firms to get more active in public work, we have to remove those barriers, and those legislative and regulatory issues, that stifle them from getting involved.

And with that, I'll close.

SENATOR AKSHAR: Thank you, Mr. Sampson.

Any questions from the dais?

OFF-CAMERA SENATOR: No, thank you.

SENATOR AKSHAR: Senator Sanders?

SENATOR SANDERS: Thank you; thank everybody, for coming out.

You've given much food for thought, and there's so much I could say, but I'm going to -- I'm going to save my few words for Mr. Coletti.

OFF-CAMERA SPEAKER: Of course.

SENATOR SANDERS: This is one of the smartest guys.

OFF-CAMERA SPEAKER: I was going to say that.

SENATOR SANDERS: He's already given book after book of -- of -- of ways to go about this stuff, have ways to make it better.

I may disagree with book after book (indiscernible), I may disagree with some points, but, consistently, he has put some of the best ideas out on this.

I am looking to challenge the -- Professor Boston's study, sir.

I have been calling GIT (Georgia Institute of Technology) where he works, to speak to him. I have some questions over his stuff.

But that's almost besides the point.

The point is: Can we do better?

Can we -- do we take a philosophical position, that -- that we are supposed to do better

for the entire people of New York, and the nation, for that matter?

Yes.

This is -- I agree, this is the step forward. It should be seen as such.

Who started it?

The Republicans started it, but that's besides the point.

The point is: Are they right?

If they're right, we should go be bold enough to go and do some stuff on (indiscernible).

And so far, you're in the -- going in the right direction, and I commend you.

And, you're going to see me in some of the most picturesque --

[Laughter.]

SENATOR SANDERS: I had to work on that one. That wasn't my first word.

-- some of the most pics -- picturesque -- I couldn't even do it twice -- places in New York State.

So I will count the thousand lakes in the finger. (Indiscernible.)

[Laughter.]

SENATOR AKSHAR: Thank you, Senator Sanders.

And we just -- I want you to put on the record how much money 84 Lumber has lost since being kicked out of the program.

AMY CRISS: We estimate about $20 million a year that we have lost personally.

SENATOR AKSHAR: Since what year?

AMY CRISS: Since 2015.

SENATOR AKSHAR: Great. Okay.

Senator Little.

SENATOR LITTLE: Just think of the lost jobs in Watertown by having to close that store, and that's what we're talking about. You know, we're trying to create jobs, not lose them.

But I commend you on coming forward with a way to look at the ones who are over them, the personal net worth, although, other states don't have it, and I understand New York City doesn't have a personal net worth cap.

So, we ought to be looking at that, because there's got to be a better way to do that part of it.

Thank you.

LOUIS COLETTI: Can I say something on the personal net worth, because, Senator, you make a very important point.

In New York City, they chose a dollar-volume work.

I don't know whether it's right or wrong.

The issue, as I understand it, in the State's discussion, because we believe you should lift the personal net worth cap also, is there's a constitutional requirement, you can't keep it open-ended.

So what is that -- and I certainly don't know what the answer is, but we support lifting the personal net worth.

SENATOR LITTLE: But I really want to look at Amy's idea. I think that that -- there would be a lot of benefits to that program.

LOUIS COLETTI: Yes.

SENATOR LITTLE: Thank you.

SENATOR AKSHAR: Thank you for your testimony.

LOUIS COLETTI: Thank you for your patience and interest.

SENATOR AKSHAR: Okay. Last --

SENATOR SANDERS: Thank you to the Chair.

Oh, I'm sorry.

SENATOR AKSHAR: One more group.

SENATOR SANDERS: Absolutely.

SENATOR LITTLE: It's a great way to do it.

SENATOR AKSHAR: Yep.

So, Campbell Wallace, Tom Carey, and John Murphy, they'll be the last three to testify.

And I think we bought ourselves an extra 10 or 15 minutes.

Tom Carey, John Murphy, did we lose you?

I don't blame you.

Okay. Dominic, why don't you start.

Thank you.

DOMINIC CASSANELLI: Sure.

First and foremost, I want to thank everybody on the panel for giving us an opportunity -- me an opportunity to speak, and, labor, a seat at the table. We really appreciate that.

I had a bunch of examples that I was ready to give you guys, and, for lack of time, I'll be quick, and I have one example that kind of encompasses all of my examples.

And, I just want to start by saying, this is a very progressive idea, one that I, technically, agree with. But, with every idea there's certain issues that you don't foresee in the course of that idea.

And, as a labor organization, as a union

representative, and the employees we represent, and the contractors that we deal with on a day-to-day basis, we hear certain scenarios that possibly you guys don't hear, and -- and I want to be a voice for you guys to help you to hear those.

And one of the main ones that has been touched on here is the amount of time it takes to actually get the certification.

We have truck-rental company. It took almost two years to receive their certification.

Now, in the course of those two years, the amount of opportunities that they lost due to not having that certification was tremendous.

And, it doesn't just affect that trucking company.

If you're familiar with construction now, a lot of these contractors, they decide to -- just with the liabilities and the insurance factor, they decide not to buy trucks, and -- as opposed to rent them. It's just cheaper a way of doing business, and a smarter way, to be honest.

But -- so the issue therein lies, is that these truck-rental companies, like this company that I'm talking about, that went for the certification and couldn't get it for two years, when you go --

and all these contractors now, when you go and you start a job, and you lay a shovel in the ground, more than likely, the dirt happens to be contaminated.

And, if you ask me, and if you look, in Westchester, which is where -- we represent Westchester in Putnam County.

Westchester, Putnam, and in the five boroughs, you know how many companies there are that haul contaminated that are an MWBE?

"One," to handle Westchester, Putnam and all five boroughs.

All of the rest of the companies come from New Jersey.

Now, I don't think that this program was started to help New Jersey companies get work in New York State. I mean, it doesn't seem prudent to New York State. I mean, you're eliminating jobs from New York, and allowing New Jersey companies to come in and do the work.

Another point to this, the best-effort test that you have to meet, is we're noticing a lot that the -- again, we represent 300-some contractors in Westchester and Putnam alone -- and one of the tests that don't meet the criteria is that they have a

labor contract.

So, we dealt with a company who had no other choice but to go outside of the union realm and hire any non-union concrete company.

There happens to not be any union MWBE concrete companies in Westchester and Putnam County, so, they went outside the scope of our labor contract. We had issues with that.

And their answer to us was that, Well, that doesn't meet the test. You know, just because we have a labor contract, that doesn't show that we gave our best effort.

So they can, therefore, violate our labor contract to go outside and hire a non-union company.

Like I said, non-union, union, okay, but what about the local labor?

And the problem with this is that, that concrete company happened to be from out of the area, not in Westchester, not in Putnam.

So now you're not having people shop in our stores, you're not having people pay the taxes that we have to pay in Westchester, and you know it's one of the highest.

So these are just some of the examples that I wanted to give, that, I don't know the answers.

I don't have the answers, but I'm willing to discuss all these issues.

And like I said, I have many more -- many more examples of companies that bid work, that, when they won the job, they couldn't even use their 20 trucks that they had sitting, because they had to meet a certain goal. So they had to sit all their trucks and rent.

It's a problem.

And, I think the more and more you talk to the MWB enterprises and the non-MWB enterprises, I think you'll get more of a gauge of where people lie, and maybe better avenues to try to rectify the issues that are at hand.

And I thank you for giving me the time to speak.

SENATOR AKSHAR: Dominic, thank you.

DOMINIC CASSANELLI: Thank you.

SENATOR AKSHAR: Mr. Wallace.

CAMPBELL WALLACE: Thank you.

Thanks for having me on today.

Senator Akshar, Senator Ritchie, appreciate the opportunity to share the engineering industry's perspective with this panel.

I'm not going belabor the many points that

were made earlier. We agree with a lot of the solutions that were proposed.

One thing we do want to make clear, though, is that the engineering industry, like the legal industry that was represented earlier, is a professional-service industry, and the barriers to entry to it are intentional.

Engineering and architecture in the allied-design industries, they're tough to get into by design, so that things aren't designed incorrectly, the public is protected, and there's not as much movement in and out of the industry.

One thing the engineering industry operates in is a world of facts and figures, and objective of measurable reality.

So, when we looked at the most recent disparity study, we definitely scratched our head for a moment and wondered where some of the numbers came from, especially, as I said earlier, we're a licensed profession. And to be an engineer, you have to be certified by the state education department.

So, you can go on the website and see exactly who's a licensed engineer in the state. It's a pretty well-defined and well-described world. You

can tell who exactly is in -- is in this industry.

And with minimal further research, you can look at the demographics of this industry also.

And, the numbers we came up with in our association, I should say, we are ACEC New York, and we represent 270 member firms in the consulting engineering industry, and our membership reflects the membership of the state's engineering industry as a whole very closely.

And, I believe that we have 20-something percent minority or minority -- women- or minority-owned firms. That's the rough estimate of the makeup of our profession.

And in the construction-related industry, a section of the most recent disparity study, the numbers didn't match, didn't even come close to that. We're not quite sure what they were looking at.

So, obviously, for the program to succeed, and we want the MWBE program to succeed, full stop. We think it's -- the -- the social goals behind it are laudable, and it really provides a lot of opportunity for the state, in general.

For the program to succeed, though, it has to be done in such way that comports to reality, and

is -- and will stand up strong to any, you know, potential challenges.

So, clearly, having the disparity study redone in such a way that truly measures what is measurable to. This isn't something that is not knowable. We really think that's a key step, going forward.

Some other things that would really help the program a lot:

Obviously, speeding up the certification process.

We have firms that have called us and spoke to us, who are members, and said:

You know, we'd love to participate. We just can't get through the effort. We're so busy with doing what we're doing. You know, the state, in some areas, is booming, there's a lot of construction going on. We can't take time out of what we do to go through the process to get certified.

And it would make lives easier for some of our larger firms, to work with the firms that want to be certified. But if they can't even get in the program in the first place, that's certainly not helping anyone.

Capacity is something that has to be measured also.

Looking at Firm A and Firm B, one might -- one might be one category, and the other might be in a separate category. But to say that the two can do equivalent work isn't realistic.

In looking at the disparities in the state, capacity is a huge thing. They're not equivalent across the board.

So that's something that we think has to be addressed in the next disparity study.

Finally, you know, we have a number of best practices. I'm not going to belabor this because this has already been said.

The flexibility, it has to be regionally focused, and it there has to be flexibility in how the numbers are driven.

And compliance should be an evaluative, communicative tool. Firms that do make a good effort to try to comply, it shouldn't be held over their head and they shouldn't hammered with it.

Waivers are something, again, have been said.

As the disparity -- or, pardon me.

As the goal numbers have gone up, waivers have gone up. We think that's a really good proxy

for the fact that there's a misalignment between what the numbers are and what the reflective -- what the demographics are in the state.

So, again, in the interest of time, I won't go through my entire testimony, but we stand ready to answer any questions you may have about it.

SENATOR RITCHIE: Senator, (indiscernible).

SENATOR MURPHY: Yes.

First of all, Dominic, thank you for being here today.

Your example is spot-on, that Senator Little is talking about, about how we're -- we need to keep jobs here in New York State.

The intent of this program, I think we all agree with, the implementation is a disaster --

DOMINIC CASSANELLI: I agree.

SENATOR MURPHY: -- of how to try and make sure that we can supplement it, and make sure that it's doing the right thing.

Your examples were an excellent overview of why we need to fix this, to make sure we keep the jobs here in New York State because we can't make a quota. And so now we got to do this, and ex -- and import people from New Jersey. And we can't even have our own people in New York State work.

And it's a big reason why we're ranked 50th, dead last, in America as a business-friendly state.

So we'll fix it.

Thank you for being here.

DOMINIC CASSANELLI: Thank you.

SENATOR RITCHIE: Senator Little.

SENATOR LITTLE: Just on the engineering side, and the architecture, I know, kind of looked at, in the years past, as a non-traditional job for women.

And you do have programs, though, right now, aren't we, where we're encouraging women to become more interested in math, science, engineering, and even in architecture?

CAMPBELL WALLACE: Our association sponsors scholarships, and a number of them support that exact interest, as you're saying.

And we agree 100 percent, they have been fields in the past that have not been as inclusive as they could have been. And it's something our industry has recognized and accepted, and done our best part to move it forward, and understand that we have to grow the inclusiveness of our industry, for sure.

SENATOR LITTLE: Uh-huh.

Well, as bad as we are in the North County, we do have a women-owned architectural business.

So, I guess that's a check to our area.

CAMPBELL WALLACE: That's fantastic.

SENATOR LITTLE: Yeah.

Thank you very much.

SENATOR RITCHIE: Thank you, both.

DOMINIC CASSANELLI: Thank you.

CAMPBELL WALLACE: Thank you.

SENATOR RITCHIE: And with that, we'll be wrapping up here.

I would just like to say that we got some really good information today on some of the challenges, but also on some of the things that are going well.

Senator Sanders, (indiscernible).

SENATOR SANDERS: Thank you.

And I want to commend both Chairs for this.

I've always had faith in the American people; and, therefore, the people of New York State.

I have faith that decent people can grapple with very difficult issues, and come to something -- something better, something that hasn't been seen before, something that -- this is an old experiment.

This is an experiment, 400 years old, and

going, and it's not going be resolved instantly.

But if people of good will come together, that we can deal with these things.

We're not going to agree on every single thing, but we should agree that we need to put the people of New York State first.

And if we can do that, then we can figure something great.

So I want to commend the Chairs again, and I want to show how much I believe in this, by taking my summer, and I'm going to go to -- around town, and I'm going to see some places.

I always thought the North County was The Bronx, personally.

[Laughter.]

SENATOR SANDERS: So I'm going to discover some new parts, and see common people trying to live a decent life, and see whatever the challenges they are.

And, I know about the challenges of some places.

And through this process, we can perhaps come with something that would make all of the New Yorkers say, You know what? They actually earn their pay.

To the Chairs, again I say, thank you.

And to everybody who sat through this, thank you, on both sides.

SENATOR AKSHAR: Yeah, Senator, I think you -- you make a very valid point.

I think we all want the same thing. It's just a matter of how we get there.

And, you know, I think we heard some recurring themes today.

And my guess is, that we'll hear those same themes, whether we're in the North County, we're in Western New York, we're in New York City.

And, again, I think that this is an issue, regardless of your political persuasion, that, you know, people want to find some solutions to.

So, I'm incredibly pleased that we're doing it in a bipartisan manner.

I'm incredibly pleased that we're traveling throughout the state.

And I too just want to thank everybody for being here and providing your testimony.

I want to thank the staff who do a remarkable job. And, you know, it's relatively easy to be us on a daily basis because we have such great people that work in the backside of the house, and they

really carry our water.

So, whether it's the staff in the back of the room there that are operating the cameras;

Or from counsel's office, Lisa Harris, thank you, and your staff, for all that you do.

So, look forward to continuing this conversation throughout the state.

Thank you.

(Whereupon, at approximately 1:37 p.m., the joint-committee public hearing held before the New York State Senate Standing Committee on Labor and the Senate Standing Committee on Economic Development, concluded, and adjourned.)

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