

Testimony of

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Before the

**Assembly Standing Committees on
Governmental Operations, and
Small Business,
and
Subcommittee on Oversight of Minority
and Women-Owned Business Enterprises,
and
Task Force on Women's Issues**

Hearing on the Minority and Women-Owned Business Enterprise (MWBE) Program

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Chairs and members of the committees, subcommittee, and task force, thank you for providing me with this opportunity to testify today. I am Tom O'Connor, Vice President, Government Relations for the Capital Region Chamber.

The Capital Region Chamber's roots trace back to 1819. The Chamber's goal is economic prosperity – for our business members and for all who call the Capital Region home. We represent 2,600 businesses and organizations from throughout the Capital Region – Albany, Saratoga, Schenectady, and Rensselaer Counties and beyond – that employ more than 150,000 area residents. The Chamber helps build a strong community by connecting our members to people, business, and issues important to business success. We provide leadership and resources to grow member businesses and our regional economy. Of importance related to this hearing, our Chamber is designated as one of Empire State Development's (ESD) Entrepreneurship Assistance Centers (EAC). Our EAC is an award-winning center that provides one-on-one assistance and a 60-hour intensive Entrepreneur Boot Camp training program twice per year. Annually, we guide 150-200 would-be entrepreneurs and existing businesses in the Capital Region through the step-by-step process of starting, operating and growing a business.

Our organization appreciates that the grant cap for Empire State Development's Entrepreneurship Assistance Centers was increased in the 2024-25 State Budget...the first time in more than two decades. Among responsibilities, our EAC provides certification assistance to New York State Minority/Women-owned Business Enterprises (MWBE). It is important to note

that in order to become an EAC, the host organization must be located in an area accessible to minority group members, women, and other target populations. Since 1995, the Capital Region Chamber Foundation has received funding from ESD to serve as the region's EAC. We are committed to serving women and BIPOC-owned (Black, Indigenous and People of Color) businesses and entrepreneurs across all industries. Through our Boot Camp, 1,004 entrepreneurs and small businesses have been served to date, with nearly 70% being female entrepreneurs/business-owners and 47% being BIPOC entrepreneurs/business owners.

The Chamber's EAC has and will continue to target services to SEDI (socially and economically disadvantaged) entrepreneurs and business owners within our MSA, which includes Albany, Rensselaer, Saratoga, Schenectady, and Schoharie counties. The total population is just under 900,000 (U.S. Census Reporter, 2021) and is predominantly non-minority/white with approximately 25% reported as BIPOC other than non-Hispanic white (U.S. Census, American Community Survey, 2021) and 51% as female. Additionally, the Albany-Schenectady-Troy MSA area counts more than 2,000 minority-owned businesses (U.S. Census, Annual Business Survey, 2019) and 3,457 woman-owned businesses (U.S. Census, Annual Business Survey 2020).

The Capital Region Chamber is the only regional resource organization to provide focused technical assistance and programs specifically targeted for woman and BIPOC entrepreneurs and small business owners. Our Entrepreneur Boot Camp is the only comprehensive business plan development course that is not restricted by industry segment, university affiliation, business formation or revenue status that offers a business plan competition and seed-grant award opportunities to its participating cohort members. Our Chamber could not otherwise afford to provide this technical assistance and training without funding from the state.

Now I'll turn my attention specifically to the MWBE program. According to ESD, the Division of Minority and Women's Business Development's (DMWBD) mission is to promote equality of economic opportunities for minority and women-owned business enterprises and to eliminate barriers to their participation in State contracting. DMWBD provides information and resources that increase access to opportunities for minority and women-owned business enterprises throughout New York State.

Article 15-A of the Executive Law, states that in order to be eligible for certification, a for-profit firm must be fifty-one percent (51%) owned, operated, and controlled by citizens or permanent resident aliens who are either a minority and/or woman, and the ownership is real, substantial and continuing.

While the mission of the DMWBD is laudable, and the eligibility requirements are for the most part reasonable, there are shortfalls with the MWBE program and barriers that the current program has created that are preventing businesses from growing and thriving.

As you are aware, over the last several years, much focus has been placed on fraud associated with certain MWBE certified businesses. Such instances of fraud are unfortunate. However, they do not represent, nor should they define, the vast majority of our business owners. While we

fully support rooting out fraud and holding bad actors accountable, we believe that those that have overseen the MWBE program, as well as program staff, have gone beyond doing their due diligence and have made the certification/recertification process far too onerous. From the perspective of our member businesses, applicants for certification/recertification are automatically treated with suspicion. Instead of providing applicants with the assistance they need during the application process, the MWBE program staff often take a more arms-length and adversarial approach. Furthermore, our members that have gone through the MWBE certification/recertification process question the bandwidth of those assigned to reviewing applications. It is apparent to these applicants that program staff members are not fully aware of how businesses are financed, organized, and operated. The lack of trust and the limited capacity on the part of program staff has led to an unnecessarily long and drawn-out application process, and in some instances the questionable denials of certifications/recertifications. The MWBE program staff may disagree with this perspective. However, it is a perspective formed by the experiences of our members. It is also informed by the *2024 Disparity Study* which states reoccurring comments from businesses “cited the length of the certification process, lack of response from procurement or contracting staff, and the denial of certifications as alarming issues.” The program’s mindset must change. Information provided by applicants should be trusted and should be accepted by the agency without suspicion. The program needs to act on and to live up to its stated mission, or what the Disparity Report calls “good faith efforts to include minority and women businesses.”

It has become apparent that there is a disconnect between the legislature’s intent, what the law currently states, what the regulations state, and how the MWBE program is being implemented. Article 15-A is approximately twenty-seven pages and the related regulations are fifty-nine pages. The program has been made far too complex for many small businesses to understand the criteria and what is necessary to apply.

What the law conveys:

- Must be owned, operated and controlled by a minority or woman
- Must be at least 51% owned by minority or women
- Ownership must be real, substantial and continuing
- Woman ownership must exercise the authority to control independently the day-to-day business decisions

What the regulations convey:

- Capital Contributions
- Pro forma Ownership (Note: this criterion has led to denials based on the gifting of shares)
- Risk/Profit must be proportional to shares owned (Note: this has included an analysis of salaries which have led to denials)
- Expertise and credentials (Note: This has led to denials. Are these criteria necessary for all sectors?)
- Competency in industry. It must be industry specific. General Business Administration does not count. (Note: This has led to denials. Are these criteria necessary for all sectors?)

For the last several years, our Chamber has worked closely with the Women Presidents' Organization (WPO). We have met with the previous administration and the Hochul administration regarding the need to improve the MWBE program. Additionally, in 2023 the New York State Legislative Women's Caucus invited me to be a panelist for their MWBE discussion and I was able to share our concerns and suggested improvements to the program. While the WPO will share their concerns directly with you, I would like to highlight some areas that continue to be a topic of discussion amongst our Chamber's women-owned businesses.

Our women business owners believe that businesses lose contracts and economic opportunities while in limbo waiting to become recertified or for a hearing to dispute denial decisions. They believe applicants do not have the opportunity or access to MWBE division reviewers to engage in a two-way dialogue to understand, clarify or cure perceived application deficiencies. Importantly, they believe the reason and basis for denials provided to women-owned businesses often appear to be arbitrary, inconsistent, inappropriate, insufficient and at times lack transparency.

Suggestions for improving the program

- Article 15-A, agency regulations, and agency processes, particularly those related to criteria, should be simplified and realigned to reflect real world business practices, including how businesses are financed and structured, as well as the role and function of a CEO.
- The bandwidth of program staff should be improved, and their mindset should be changed. Staff should fully understand how businesses are organized, financed, and operated, and they should become advocates for applicants rather than adversaries.
- There should be a two-way dialogue during the application process. Online / email communications are not enough.
- Criteria should be transparent.

Importantly, the legislature should consider legislation sponsored by Assemblyman John McDonald which would streamline the process for recertification.

Our Chamber stands ready to work in partnership with the legislature, the governor, and ESD to transform and simplify the current MWBE program so that it can better serve our state's minority and women owned businesses.

Thank you for the opportunity to share with you the Capital Region Chamber's perspective. I'd be happy to answer your questions at this time.