

Corporate Law Alert: New York Governor Kathy Hochul discusses Minority and Woman Business Enterprise (“MWBE”) certification difficulties in “State of the State” address

In New York Governor Kathy Hochul’s first “State of the State” address, given on January 6, 2022, she made reference to the State’s Minority and Woman Owned Business Enterprise certification program. Specifically, she stated that the State will “make it easier to qualify as an MWBE, so everyone can have access to opportunities.” This remark was made in the general context of job training funding and a proposed “Workforce Development Office” to be housed in Empire State Development, the agency responsible for MWBE certification.

In addition to this brief comment during her speech, the MWBE certification program was addressed in more detail in the Governor’s “State of the State” Book, available at [2022StateoftheStateBook.pdf \(ny.gov\)](#). There, the Governor acknowledged “unacceptably long wait times for businesses seeking certification and limited access to business development opportunities.” The book noted that while MWBE utilization rates have exceeded the 30% goal set by the State, the Empire State Development Division of Minority and Women Business Development has been unable to handle the increased demand for certification, leading to a backlog of applications. Governor Hochul proposes to “fund and direct ESD to expand its MWBE Division workforce dedicated to processing new and renewal applications, [and also] secure a third party to help the MWBE Division more rapidly address older applications . . .”

The Governor further acknowledged a backlog in the administrative appeals process for companies whose applications are denied. She proposes that ESD “establish a new unit dedicated exclusively to processing administrative appeals, including challenges to the denial of MWBE certification. This action will allocate staff and resources to clear the existing backlog of pending administrative appeals, while also retaining sufficient staff to handle incoming appeals in a more timely manner.”

These proposals are encouraging news for Minority and Women Owned Businesses hoping to participate in state contracting opportunities. With both MWBE applications and administrative appeals taking over two years to be processed, improved procedures and a dedicated appeal staff are long overdue. The Governor’s indication that the State may ease the regulatory hurdles to certification is an important step. Though the statewide utilization goal of 30% participation in state contracts has been met, sustained and increasing demand for MWBE certifications continues to require a more streamlined, less adversarial process. Improvements to and investment in the certification process is necessary to open the benefits of the program to more women and minorities, and to pursue the broader economic growth alluded to in the Governor’s remarks.

MWBE certification and administrative appeals remains a complex, lengthy process. Whether your

company is considering certification for the first time or has been certified for years, the team at Hancock Estabrook can help you understand, pursue and maintain eligibility for certification. As our attorneys continue to monitor regulatory and administrative changes, please reach out to us with any questions about MWBE certification in New York State and elsewhere.

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