



# S.3390-A (Bailey) / A.9259-A (Peoples-Stokes)

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<b>BILL</b> S.3390-A (Bailey) / A.9259-A (Peoples-Stokes)
<b>SUBJECT</b> Address Fraud in MWBE Program
<b>DATE</b> March 01, 2022
<b>SUPPORT</b>

The Business Council supports S.3390-A (Bailey) / A.9259-A (Peoples-Stokes), which would amend the Executive Law to prevent fraud and abuse of the Minority and Women-Owned Business Enterprise (MWBE) Program. Under this bill, a post completion certification must be completed from a prime contractor and a representative of the minority or women-owned business must attest that those services were performed. Additionally, fines associated with fraud may be paid to the minority and women-owned business enterprise fund.

New York State is home to the highest MWBE utilization rate in the country - surpassing its goal of 30.51% for the 2020-2021 fiscal year - resulting in more than \$3 billion in state contracts awarded to these firms. In accomplishing this feat, the state has worked to address systemic barriers faced by these businesses and provide opportunities that have not been available. State and local governments have focused on increasing the number of government contracts awarded to MWBE's, however fraud in government contracting continues to be a serious problem. Work that is contracted to MWBE's must be performed by them. Unfortunately, some entities see fraud as a way to secure lucrative government contracts, but in the end, it diminishes the economic opportunity that was established to address the disadvantages that minorities and women face in the marketplace.

Minority Business Enterprises for example are increasingly frustrated about a lack of accountability in this area especially since there is an ever-widening wealth gap associated with a program designed to level the playing field. In certain cases, "minority" businesses were contracted as fronts for white-owned ones that ultimately performed them. The MWBE did not perform the work, instead it functioned as a "pass-through." In these schemes, a legitimate MWBE acts as an intermediary, passing most of the work to a non-MWBE firm, while invoicing the contractor for the non-MWBE work plus a small percentage fee.

Based on criminal proceedings, it has been proven that non-MWBE suppliers have falsely reflected that an MWBE provided materials although they did not have inventory or storage facilities.

The legislation aims to bring integrity to the program. Many MWBE's are small businesses, and as a result of fraudulent actions, this initiative is slowly becoming one that is representative of lost opportunities. These businesses are capable and accomplished who can deliver projects on time and on budget. Fraud hurts their competitiveness, decreases employment, and destroys the public trust in government agencies. Some of the hallmarks of the program include fairness, inclusion, and equity and with projects that are significant financial undertakings amounting to billions of dollars, the financial share of state business for these groups must be protected.

Bad actors diminish the very goals of Article 15-A and unfairly take advantage of incentives associated with state projects. Prosecutors and Inspector Generals have called for legislative steps to resolve the abuses taking place in the program and legislation that requires certification of any work performed, the revocation of certifications for felony convictions, doubling of fines, and the establishment of an MWBE fund to prosecute fraud in this space will help the program achieve its goal.

For these reasons, the Business Council strongly supports S.3390-A (Bailey) / A.9259-A (Peoples-Stokes).