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I N A S S E M B L Y

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Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the
Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to enacting the New
York state agency MWBE asset management and financial institution
strategy

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "New York
2 state agency MWBE asset management and financial institution strategy
3 act".
4 S 2. Legislative findings. 1. The New York state agency minority and
5 women-owned business enterprise (MWBE) asset management and financial
6 institution strategy is hereby established to codify and replicate
7 across certain entities established by New York state law, best prac-
8 tices with respect to the inclusion of minority and women-owned business
9 enterprises that are asset managers, investment banks, and financial and
10 professional service firms in the opportunity to provide services to
11 such New York state entities. Certain New York state entities such as
12 the common retirement fund, the New York state teachers' retirement
13 system and the New York state insurance fund, have recently adopted
14 emerging manager programs to increase opportunities for firms that
15 include small, disadvantaged or minority and women-owned business enter-
16 prises. These programs and similar programs in other states have shown
17 that there is a growing pool of minority and women-owned asset managers,
18 investment banks and financial and professional services firms that are
19 qualified to provide investment management, investment banking, under-
20 writing and other financial and professional services to New York state
21 entities. It is the intent of the legislature to institutionalize access
22 to opportunities for MWBE firms in New York state across New York state
23 entities that use such services, to create reasonable objectives for
24 conducting business with such firms, and to facilitate transparency by

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 creating a regime of public reporting about the use of such firms for
2 such services. Nothing in this act shall be deemed to preempt or affect
3 in any way existing laws regarding legal investments by New York state
4 entities covered by this act, to conflict with the fiduciary obligations
5 of the fiduciaries, board members or executive officers of any of such
6 controlled entities, as applicable, to create quotas or other unlawful
7 preferences, or to diminish the ability of any entity covered by this
8 act to make decisions consistent with best practices for procuring the
9 services covered by this act.

10 2. In 2006, the New York state department of economic development or
11 "NYSDEC" commissioned a study to assist the state in evaluating whether
12 the state's minority and women-owned business enterprise or MWBE initi-
13 atives were still necessary to remedy discrimination in state contract-
14 ing programs. On May 5, 2010, the study was presented to NYSDEC, members
15 of the legislature and other stakeholders. The study's findings indi-
16 cated that: (a) there is both statistical and anecdotal evidence of
17 business discrimination against MWBEs in the private sector of the New
18 York state market area; (b) there is evidence of discrimination against
19 MWBEs in the New York state market area in the small business credit
20 market; (c) MWBEs in the state's market area report suffering business
21 related discrimination in large numbers and with statistically signif-
22 icant greater frequency than non-MWBEs; and (d) in general, minorities
23 and women reported that race- and gender-conscious contracting programs
24 are needed to ensure full and fair access to government contracts
25 because being certified created opportunities that otherwise would not
26 have presented themselves.

27 3. As a result of such findings, the governor and the legislature are
28 considering amendments to article 15-A of the executive law and certain
29 provisions of the public authorities law that cover MWBE procurement
30 programs to improve outreach to MWBEs by state agencies and state
31 authorities, to increase transparency and public reporting on direct and
32 indirect expenditures with MWBEs, to generally eliminate artificial
33 barriers to entry for MWBE firms and to strengthen the efficacy of the
34 state's MWBE programs.

35 4. On December 11, 2009, the public authorities reform bill was signed
36 into law by the governor, which among other things, expanded the
37 contracting areas covered under article 15-A of the executive law to
38 include financial and professional services, which previously had been
39 specifically excluded from article 15-A of the executive law. This act
40 is an effort to apply the principles inherent to other New York state
41 MWBE programs to the New York state entities covered hereby as it
42 relates to certain financial and professional services. The legislature
43 deems it necessary to codify certain practices by such New York entities
44 to broaden the adoption of such practices by other New York state enti-
45 ties and to facilitate uniformity with respect to the operation of such
46 programs, identification of qualified firms, and transparency with
47 respect to public reporting on meeting the objectives of such programs.

48 5. New York state has historically held a competitive advantage as the
49 center of the worldwide financial services industry. New York state
50 financial service firms have been key providers of employment opportu-
51 nities for New York residents and critical generators of tax revenue
52 both for New York state and its local governments. As an economic devel-
53 opment matter, fostering a strong financial services industry that
54 includes meaningful participation by MWBE firms is an important objec-
55 tive. In addition, the legislature anticipates that increasing state
56 contracting opportunities and increasing capital access to underserved

1 regions and to underserved groups such as minority and women-owned busi-
2 ness enterprises, will increase employment opportunities for New York
3 state residents.

4 6. New York state shall establish goals that encourage New York state
5 entities to identify minority and women-owned business enterprises that
6 are financial services or professional service firms. The legislature
7 intends to optimize competition for financial and professional services,
8 diversify investments among a larger pool of asset managers and other
9 financial services firms and to support job creation and economic devel-
10 opment.

11 S 3. Section 136-b of the state finance law, as added by chapter 261
12 of the laws of 1988, is amended to read as follows:

13 S 136-b. [Selection of underwriters by state agencies. Whenever a
14 state agency, as defined in article fifteen-A of the executive law,
15 sells its bonds, notes or other securities at a private sale, in select-
16 ing one or more underwriters to purchase such securities the state agen-
17 cy shall consider, among other things, the participation of firms certi-
18 fied pursuant to such article as minority or women-owned firms and the
19 ability of other firms under consideration to work with minority and
20 women-owned business enterprises so as to promote and assist partic-
21 ipation by such enterprises.] NEW YORK STATE AGENCY AND AUTHORITY MWBE
22 ASSET MANAGEMENT AND FINANCIAL INSTITUTION STRATEGY.

23 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS
24 SHALL HAVE THE FOLLOWING MEANINGS:

25 A. "MWBE ASSET MANAGER" SHALL MEAN AN ASSET MANAGER IN ANY OF THE
26 FOLLOWING ASSET CLASSES: PUBLIC EQUITY OR FIXED INCOME SECURITIES, HEDGE
27 FUNDS, FUND OF HEDGE FUNDS, PRIVATE EQUITY (INCLUDING VENTURE CAPITAL),
28 FUND OF PRIVATE EQUITY FUNDS, REAL ESTATE INVESTMENT FUNDS, FUND OF REAL
29 ESTATE INVESTMENT FUNDS, OR ANY OTHER ASSET CLASS FOR WHICH THE APPLICA-
30 BLE NEW YORK STATE AGENCY ENGAGES EXTERNAL ASSET MANAGERS THAT ARE: (I)
31 A MWBE AND (II) A REGISTERED INVESTMENT ADVISOR OR EXEMPT FROM SUCH
32 REGISTRATION.

33 B. "MWBE FINANCIAL INSTITUTION" SHALL MEAN: (I) AS IT RELATES TO
34 BROKERAGE SERVICES, A REGISTERED BROKER DEALER THAT IS A MWBE, OR (II)
35 AS IT RELATES TO ANY OTHER FINANCIAL OR PROFESSIONAL SERVICES, A MWBE
36 THAT PROVIDES BANKING, FINANCIAL ADVISORY, INSURANCE, FINANCIAL
37 RESEARCH, VALUATION, UNDERWRITING OR OTHER FINANCIAL SERVICES AND HAS
38 ALL REQUISITE LICENSES TO CONDUCT SUCH ACTIVITIES.

39 C. "MINORITY GROUP MEMBER" SHALL MEAN A UNITED STATES CITIZEN OR
40 PERMANENT RESIDENT ALIEN WHO IS AND CAN DEMONSTRATE MEMBERSHIP IN ONE OF
41 THE FOLLOWING GROUPS:

42 (I) BLACK PERSONS HAVING ORIGINS IN ANY OF THE BLACK AFRICAN RACIAL
43 GROUPS;

44 (II) HISPANIC PERSONS OF MEXICAN, PUERTO RICAN, DOMINICAN, CUBAN,
45 CENTRAL OR SOUTH AMERICAN OF EITHER INDIAN OR HISPANIC ORIGIN, REGARD-
46 LESS OF RACE;

47 (III) NATIVE AMERICAN OR ALASKAN NATIVE PERSONS HAVING ORIGINS IN ANY
48 OF THE ORIGINAL PEOPLES OF NORTH AMERICA; AND

49 (IV) ASIAN AND PACIFIC ISLANDER PERSONS HAVING ORIGINS IN ANY OF THE
50 FAR EAST COUNTRIES, SOUTH EAST ASIA, THE INDIAN SUBCONTINENT OR THE
51 PACIFIC ISLANDS.

52 D. "MWBE" SHALL MEAN A BUSINESS ENTERPRISE WITH SIGNIFICANT PRESENCE
53 OR INVESTMENTS IN NEW YORK STATE, INCLUDING WITHOUT LIMITATION, A SOLE
54 PROPRIETORSHIP, PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED LIABILITY
55 PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION OR OTHER SIMILAR
56 ENTITY WHETHER DOMESTIC OR FOREIGN, THAT IS:

1 (I) (A) AT LEAST FIFTY-ONE PERCENT OWNED BY: (1) ONE OR MORE MINORITY
2 GROUP MEMBERS, OR (2) ONE OR MORE WOMEN, IN EACH CASE, WHO HAVE SIGNIF-
3 ICANT EXPERIENCE IN ASSET MANAGEMENT, BROKERAGE, OTHER FINANCIAL
4 SERVICES OR RELATED PROFESSIONAL SERVICES SUCH AS ACCOUNTING, VALUATION
5 OR LEGAL SERVICES, OR (B) SUBSTANTIALLY OWNED BY: (1) ONE OR MORE MINOR-
6 ITY GROUP MEMBERS, OR (2) ONE OR MORE WOMEN, IN EACH CASE, WHO HAVE
7 SIGNIFICANT EXPERIENCE IN ASSET MANAGEMENT, BROKERAGE, OTHER FINANCIAL
8 SERVICES OR RELATED PROFESSIONAL SERVICES SUCH AS ACCOUNTING, VALUATION
9 OR LEGAL SERVICES. WITH RESPECT TO A BUSINESS ENTERPRISE SUBSTANTIALLY
10 OWNED BY ONE OR MORE MINORITY GROUP MEMBERS, OR ONE OR MORE WOMEN, SUCH
11 ENTITY MUST BE CERTIFIED BY THE OFFICE OF THE STATE COMPTROLLER PURSUANT
12 TO SECTION FOUR HUNDRED TWENTY-THREE OF THE RETIREMENT AND SOCIAL SECUR-
13 ITY LAW;

14 (II) AN ENTERPRISE IN WHICH SUCH MINORITY OWNERSHIP OR OWNERSHIP BY
15 WOMEN, AS APPLICABLE, IS REAL, SUBSTANTIAL AND CONTINUING;

16 (III) AN ENTERPRISE IN WHICH SUCH MINORITY OWNERSHIP OR WOMEN OWNER-
17 SHIP, AS APPLICABLE, HAS AND EXERCISES THE AUTHORITY TO CONTROL INDE-
18 PENDENTLY THE DAY-TO-DAY BUSINESS DECISIONS OF THE ENTERPRISE;

19 (IV) AN ENTERPRISE AUTHORIZED TO DO BUSINESS IN THIS STATE AND INDE-
20 PENDENTLY OWNED AND OPERATED; AND

21 (V) AN ENTERPRISE CERTIFIED BY THE DEPARTMENT OF ECONOMIC DEVELOP-
22 MENT'S DIVISION OF WOMEN AND MINORITY OWNED BUSINESS DEVELOPMENT OR BY
23 THE OFFICE OF THE STATE COMPTROLLER PURSUANT TO SECTION FOUR HUNDRED
24 TWENTY-THREE OF THE RETIREMENT AND SOCIAL SECURITY LAW AS A
25 "FINANCIAL/PROFESSIONAL MWBE".

26 E. "STATE AGENCY" SHALL MEAN:

27 (I) (A) ANY STATE DEPARTMENT, OR (B) ANY DIVISION, BOARD, COMMISSION
28 OR BUREAU OF ANY STATE DEPARTMENT, OR (C) THE STATE UNIVERSITY OF NEW
29 YORK AND THE CITY UNIVERSITY OF NEW YORK, INCLUDING ALL THEIR CONSTITU-
30 ENT UNITS EXCEPT COMMUNITY COLLEGES AND THE INDEPENDENT INSTITUTIONS
31 OPERATING STATUTORY OR CONTRACT COLLEGES ON BEHALF OF THE STATE, OR (D)
32 A BOARD, A MAJORITY OF WHOSE MEMBERS ARE APPOINTED BY THE GOVERNOR OR
33 WHO SERVE BY VIRTUE OF BEING STATE OFFICERS OR EMPLOYEES AS DEFINED IN
34 SUBPARAGRAPHS (I), (II) OR (III) OF PARAGRAPH (I) OF SUBDIVISION ONE OF
35 SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW;

36 (II) THE FOLLOWING:

37 ALBANY COUNTY AIRPORT AUTHORITY;

38 ALBANY PORT DISTRICT COMMISSION;

39 ALFRED, ALMOND, HORNELLSVILLE SEWER AUTHORITY;

40 BATTERY PARK CITY AUTHORITY;

41 CAYUGA COUNTY WATER AND SEWER AUTHORITY;

42 (NELSON A. ROCKEFELLER) EMPIRE STATE PLAZA PERFORMING ARTS CENTER
43 CORPORATION;

44 INDUSTRIAL EXHIBIT AUTHORITY;

45 LIVINGSTON COUNTY WATER AND SEWER AUTHORITY;

46 LONG ISLAND POWER AUTHORITY;

47 LONG ISLAND RAIL ROAD;

48 LONG ISLAND MARKET AUTHORITY;

49 MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY;

50 METRO-NORTH COMMUTER RAILROAD;

51 METROPOLITAN SUBURBAN BUS AUTHORITY;

52 METROPOLITAN TRANSPORTATION AUTHORITY;

53 NATURAL HERITAGE TRUST;

54 NEW YORK CITY TRANSIT AUTHORITY;

55 NEW YORK CONVENTION CENTER OPERATING CORPORATION;

56 NEW YORK STATE BRIDGE AUTHORITY;

1 NEW YORK STATE OLYMPIC REGIONAL DEVELOPMENT AUTHORITY;
2 NEW YORK STATE THRUWAY AUTHORITY;
3 NIAGARA FALLS PUBLIC WATER AUTHORITY;
4 NIAGARA FALLS WATER BOARD;
5 PORT OF OSWEGO AUTHORITY;
6 POWER AUTHORITY OF THE STATE OF NEW YORK;
7 ROOSEVELT ISLAND OPERATING CORPORATION;
8 SCHENECTADY METROPLEX DEVELOPMENT AUTHORITY;
9 STATE INSURANCE FUND;
10 STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY;
11 STATE UNIVERSITY CONSTRUCTION FUND;
12 TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY;
13 UPPER MOHAWK VALLEY REGIONAL WATER BOARD;
14 UPPER MOHAWK VALLEY REGIONAL WATER FINANCE AUTHORITY;
15 UPPER MOHAWK VALLEY MEMORIAL AUDITORIUM AUTHORITY;
16 URBAN DEVELOPMENT CORPORATION AND ITS SUBSIDIARY CORPORATION;
17 (III) THE FOLLOWING ONLY TO THE EXTENT OF STATE CONTRACTS ENTERED INTO
18 FOR ITS OWN ACCOUNT OR FOR THE BENEFIT OF A STATE AGENCY AS DEFINED IN
19 SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH:
20 DORMITORY AUTHORITY OF THE STATE OF NEW YORK;
21 FACILITIES DEVELOPMENT CORPORATION;
22 NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY;
23 NEW YORK STATE SCIENCE AND TECHNOLOGY FOUNDATION.
24 2. TO THE EXTENT THAT ANY STATE AGENCY ENGAGES OR PLANS TO ENGAGE
25 THIRD-PARTIES TO:
26 A. MANAGE CASH ASSETS OR INVESTMENT SECURITIES HELD BY SUCH STATE
27 AGENCY IN EXCESS OF ONE HUNDRED MILLION DOLLARS IN THE AGGREGATE,
28 B. PROVIDE BROKER-DEALER SERVICES TO SUCH STATE AGENCY RESULTING OR
29 LIKELY TO RESULT IN COMMISSION IN EXCESS OF TWO MILLION FIVE HUNDRED
30 THOUSAND DOLLARS IN THE AGGREGATE IN A FISCAL YEAR OR TRADES OF FIXED
31 INCOME SECURITIES WITH VOLUME IN EXCESS OF TWENTY-FIVE MILLION DOLLARS
32 IN A FISCAL YEAR, OR
33 C. PROVIDE OTHER FINANCIAL OR PROFESSIONAL SERVICES TO SUCH STATE
34 AGENCY RESULTING IN FEES FOR SERVICES EQUAL TO OR EXCEEDING TWO MILLION
35 FIVE HUNDRED THOUSAND DOLLARS IN THE AGGREGATE IN A FISCAL YEAR OR TWO
36 HUNDRED FIFTY THOUSAND DOLLARS IN A SINGLE TRANSACTION, SUCH STATE AGEN-
37 CY SHALL COMPLY WITH THE REQUIREMENTS OF THIS SECTION.
38 3. A. IN THE EVENT THAT ANY STATE AGENCY CONDUCTS OR HAS CONDUCTED
39 TRANSACTIONS FALLING WITHIN THE SCOPE OF THE TRANSACTIONS DESCRIBED IN
40 SUBDIVISION TWO OF THIS SECTION, SUCH STATE AGENCY SHALL ESTABLISH A
41 MWBE ASSET MANAGEMENT AND FINANCIAL INSTITUTION STRATEGY INCLUDING
42 REASONABLE GOALS FOR UTILIZATION OF MWBE ASSET MANAGERS, MWBE FINANCIAL
43 INSTITUTIONS AND MWBE FINANCIAL AND PROFESSIONAL SERVICE FIRMS, WHICH
44 STRATEGY SHALL INCLUDE THE FOLLOWING OBJECTIVES:
45 (I) WITH RESPECT TO EACH ASSET CLASS IN WHICH THE APPLICABLE NEW YORK
46 STATE AGENCY ENGAGES EXTERNAL ASSET MANAGERS, INVESTING ASSETS OF SUCH
47 STATE AGENCY WITH MWBE ASSET MANAGERS TO THE GREATEST EXTENT FEASIBLE,
48 GIVEN MARKET AVAILABILITY OF MWBE ASSET MANAGERS THAT FULFILL SUCH STATE
49 AGENCY'S SELECTION CRITERIA WITH RESPECT TO EACH SUCH CLASS, IN EACH
50 YEAR THROUGH THE FIFTH FULL FISCAL YEAR AFTER THE DATE OF ENACTMENT;
51 (II) SUBJECT TO BEST EXECUTION, WITH RESPECT TO EXTERNALLY MANAGED
52 SECURITIES: (A) CONDUCTING TRADES OF FIXED INCOME SECURITIES AND (B)
53 CONDUCTING TRADES OF PUBLIC EQUITY SECURITIES THROUGH MWBE FINANCIAL
54 INSTITUTIONS TO THE GREATEST EXTENT FEASIBLE, GIVEN MARKET AVAILABILITY
55 OF MWBE FINANCIAL INSTITUTIONS THAT FULFILL SUCH STATE AGENCY'S
56 SELECTION CRITERIA WITH RESPECT TO SUCH TRADING ACTIVITY, IN EACH FISCAL

1 YEAR THROUGH THE FIFTH FULL FISCAL YEAR FOLLOWING THE DATE OF ENACTMENT;
2 AND

3 (III) INCREASING EXPENDITURES ON CONTRACTS FOR ACCOUNTING, BANKING,
4 FINANCIAL ADVISORY, INSURANCE, LEGAL, RESEARCH, VALUATION, UNDERWRITING
5 AND OTHER PROFESSIONAL AND FINANCIAL SERVICES WITH MWBE FINANCIAL INSTI-
6 TUTIONS AND OTHER MWBE FINANCIAL AND PROFESSIONAL SERVICE FIRMS TO THE
7 GREATEST EXTENT FEASIBLE PROVIDED SUCH TRANSACTIONS FULFILL THE FIDUCI-
8 ARY DUTIES AND OBLIGATIONS OF MANAGEMENT OF THE STATE AGENCIES.

9 NOTHING IN THIS SUBDIVISION SHALL BE DEEMED AS REQUIRING OR PERMITTING
10 ANY STATE AGENCY TO TAKE ANY ACTION CONTRARY TO THE FIDUCIARY DUTY OF
11 THE MANAGEMENT OF SUCH STATE AGENCY, LAW OR SOUND INDUSTRY PRACTICES.

12 B. BY THE LATER OF ONE YEAR FROM THE EFFECTIVE DATE OF THIS SUBDIVI-
13 SION OR ONE YEAR FOLLOWING THE DATE THAT THE REQUIREMENTS OF THIS
14 SECTION SHALL APPLY TO A STATE AGENCY AS A RESULT OF THE EVENTS
15 DESCRIBED IN SUBDIVISION TWO OF THIS SECTION, THE CHIEF EXECUTIVE OFFI-
16 CER AND/OR MANAGING BODY OF SUCH STATE AGENCY SHALL DEVELOP AND IMPLE-
17 MENT A PLAN TO ACHIEVE THE OBJECTIVES SET FORTH IN PARAGRAPH A OF THIS
18 SUBDIVISION, INCLUDING, WITHOUT LIMITATION:

19 (I) A METHODOLOGY SUFFICIENT TO ENSURE THAT MWBE ASSET MANAGERS, MWBE
20 FINANCIAL INSTITUTIONS AND MWBE SERVICE PROVIDERS ARE MADE AWARE OF THE
21 OPPORTUNITIES MADE AVAILABLE PURSUANT TO THE STRATEGY UNDERTAKEN BY THE
22 MANAGERS OF THE APPLICABLE STATE AGENCY ESTABLISHED TO MEET THE GOALS
23 SET FORTH IN SUBDIVISION ONE OF THIS SECTION;

24 (II) REQUIREMENTS RELATED TO ANNUAL PUBLIC REPORTING, WITHIN SIXTY
25 DAYS OF THE END OF EACH FISCAL YEAR, REGARDING: (A) INVESTMENTS WITH
26 MWBE ASSET MANAGERS, COMMISSIONS WITH MWBE FINANCIAL INSTITUTIONS, AND
27 ANNUAL NON-COMMISSION EXPENDITURES (EXCLUDING INVESTMENT ALLOCATIONS)
28 WITH OR FEES PAID TO OTHER MWBE FINANCIAL INSTITUTIONS AND OTHER MWBE
29 FIRMS THAT PROVIDE FINANCIAL SERVICES OR OTHER PROFESSIONAL SERVICES TO
30 THE STATE AGENCY, AS APPLICABLE, AS A PERCENTAGE OF TOTAL INVESTMENTS,
31 COMMISSIONS OR EXPENDITURES, AS APPLICABLE, FOR SUCH SERVICES BY SUCH
32 STATE AGENCY, AND (B) EFFORTS UNDERTAKEN DURING SUCH PERIOD TO SUPPORT
33 ITS MWBE ASSET MANAGEMENT AND FINANCIAL INSTITUTION STRATEGY; AND

34 (III) PROVISIONS FOR COORDINATING WITH THE DIVISION OF MINORITY AND
35 WOMEN-OWNED BUSINESS DEVELOPMENT AND THE STATE COMPTROLLER TO IDENTIFY
36 MWBE ASSET MANAGERS AND MWBE FINANCIAL INSTITUTIONS AND OTHER MWBE
37 FINANCE AND PROFESSIONAL SERVICE FIRMS TO CREATE A DATABASE OF SUCH
38 ENTITIES. SUCH COORDINATION SHALL INCLUDE AN ANNUAL CONFERENCE TO
39 PROMOTE THE MWBE ASSET MANAGEMENT AND FINANCIAL INSTITUTION STRATEGY.

40 PROVIDED, HOWEVER, THAT IF SUCH CHIEF EXECUTIVE OFFICER OR MANAGING
41 BODY DETERMINES THAT THE FACTS GIVING RISE TO THE OBLIGATIONS OF THIS
42 SECTION ARE NOT REASONABLY LIKELY TO CAUSE THE STATE AGENCY TO HAVE A
43 RECURRING NEED FOR THE SERVICES COVERED IN THIS SECTION, SUCH CHIEF
44 EXECUTIVE OFFICER OR GOVERNING BODY MAY BY WRITTEN APPLICATION SEEK A
45 WAIVER FROM THE DIVISION OF MINORITY AND WOMEN-OWNED BUSINESS DEVELOP-
46 MENT REGARDING THE REQUIREMENTS TO COMPLY WITH THE PROVISIONS OF THIS
47 SECTION. UPON A DETERMINATION THAT SUCH WAIVER REQUEST IS REASONABLY
48 REQUESTED BECAUSE SUCH CONDITIONS ARE NOT REASONABLY LIKELY TO RECUR,
49 THE DIRECTOR OF THE DIVISION OF MINORITY AND WOMEN-OWNED BUSINESS DEVEL-
50 OPMENT MAY GRANT SUCH WAIVER.

51 S 4. The provisions of this act are severable, and if any part or
52 provision hereof, or the application thereof to any person or circum-
53 stance, shall be adjudged by any court of competent jurisdiction to be
54 invalid or unenforceable, such judgment shall not affect, impair or
55 invalidate the remaining provisions to any person or circumstance, but
56 shall be confined in its operation to the provision, person or circum-

1 stance directly involved in the controversy in which such judgment shall
2 have been rendered.

3 S 5. This act shall take effect on the ninetieth day after it shall
4 have become a law; provided, however that the amendments to section
5 136-b of the state finance law made by section three of this act shall
6 not affect the expiration of such section and shall be deemed to expire
7 therewith.