

STATE OF NEW YORK

10495 -- A

IN ASSEMBLY

May 22, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Blake) --
read once and referred to the Committee on Governmental Operations --
committee discharged, bill amended, ordered reprinted as amended and
recommitted to said committee

AN ACT to amend the retirement and social security law, the state
finance law, the education law, and the workers' compensation law, in
relation to the use of MWBE investments for New York state funds

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. The retirement and social security law is amended by adding
2 a new section 177-b to read as follows:

3 § 177-b. Use of MWBE asset management and financial institutions. 1.
4 In addition to the powers contained in any other provision of law,
5 including the provisions of the administrative code of the city of New
6 York, it shall be the goal of public officials with investment making
7 discretion and duties, including, but not limited to elected officials
8 such as the state comptroller and the comptroller of the city of New
9 York, appointed officials, the trustee or trustees of a fund, and state
10 authority officials that, to the greatest extent feasible within the
11 bounds of financial and fiduciary prudence, such public officials, trus-
12 tee or trustees shall aspire to utilize MWBE asset managers, MWBE finan-
13 cial institutions, and MWBE financial or professional service firms for
14 the investment of no less than twenty percent of the total dollar amount
15 of such fund under management, which shall include, but not be limited
16 to, the following:

17 (a) investing assets of such fund with MWBE asset managers;
18 (b) subject to best execution: (i) conducting trades of public equity
19 securities with MWBE financial institutions; and (ii) conducting trades
20 of fixed-income securities through MWBE institutions;
21 (c) allocating investments of assets of such fund either through: (i)
22 direct investments in the equities and debt securities of MWBEs; or (ii)
23 indirectly through special programs involving MWBE asset managers; or
24 (d) awarding contracts for accounting, banking, financial advisory,
25 insurance, legal, research, valuation, and other financial and profes-

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

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1 sional services to MWBE financial institutions and other MWBE profes-
2 sional service firms.

3 2. The trustee or trustees of a fund shall be authorized to establish
4 additional aspirational goals to the goals directed by subdivision one
5 of this section.

6 3. Within sixty days of the end of each fiscal year following the
7 effective date of this section, the trustee or trustees of a fund shall
8 report to and appear before the legislature on the participation of MWBE
9 asset managers, MWBE financial institutions, and MWBE professional
10 service providers in investment and brokerage transactions with or as
11 providers of services for such fund, including a comparative analysis of
12 such activity relative to such activity with all asset managers, finan-
13 cial institutions, and professional service providers for the relevant
14 period, and on the progress and success of the efforts undertaken during
15 such period to achieve the aspirational goals under subdivision one of
16 this section to the greatest extent feasible within the bounds of finan-
17 cial and fiduciary prudence. Each report shall be simultaneously
18 published on the website of such fund for not less than sixty days
19 following its release to the governor and the other recipients named in
20 this subdivision.

21 § 2. The retirement and social security law is amended by adding a new
22 section 177-e to read as follows:

23 § 177-e. Required disclosures from consultants; MWBEs and businesses
24 owned by persons with disabilities. 1. As used in this section, the term
25 "disability" shall have the same meaning as defined by section two
26 hundred ten of the economic development law.

27 2. No later than January first, two thousand twenty-one, and each
28 January first thereafter, each consultant retained by the trustee or
29 trustees of a fund shall disclose to the trustee or trustees of such
30 fund the total number of searches for investment services made by such
31 consultant in the previous calendar year including all such searches:

32 (a) that included (i) MWBE asset managers, (ii) MWBE financial
33 institutions, (iii) MWBE financial or professional service firms, or
34 (iv) any business enterprise at least fifty-one percent owned by indi-
35 viduals with disabilities;

36 (b) in which the consultant recommended for selection (i) MWBE asset
37 managers, (ii) MWBE financial institutions, (iii) MWBE financial or
38 professional service firms, or (iv) any business enterprise at least
39 fifty-one percent owned by individuals with disabilities; and

40 (c) that resulted in the selection of (i) MWBE asset managers, (ii)
41 MWBE financial institutions, (iii) MWBE financial or professional
42 service firms, or (iv) any business enterprise at least fifty-one
43 percent owned by individuals with disabilities, including the total
44 dollar amounts invested pursuant to such selection.

45 3. Beginning January first, two thousand twenty-one, no contract,
46 oral or written, for consulting services shall be awarded by the trustee
47 or trustees of a fund without first requiring the consultant to make the
48 disclosures required under subdivision two of this section.

49 4. Such disclosure shall be considered by the trustee or trustees of a
50 fund, within the bounds of financial and fiduciary prudence, prior to
51 the awarding of an oral or written contract for consulting services.

52 § 3. The retirement and social security law is amended by adding a new
53 section 177-f to read as follows:

54 § 177-f. Required disclosures from consultants; compensation and
55 economic opportunity received. 1. For the purposes of this section, the
56 following terms shall have the following meanings:

1 (a) "compensation" means any money, thing of value, or economic bene-
2 fit conferred on, or received by, a consultant in return for services
3 rendered, or to be rendered.

4 (b) "economic opportunity" means any purchase, sale, lease, contract,
5 option, or other transaction or arrangement involving property or
6 services wherein a consultant may gain an economic benefit.

7 2. No later than January first, two thousand twenty-one, and each
8 January first succeeding such date, a consultant retained by the trustee
9 or trustees of a fund shall disclose to the trustee or trustees of such
10 fund all compensation and economic opportunity received in the prior
11 twenty-four months from investment advisors retained by such trustee or
12 trustees.

13 3. Beginning January first, two thousand twenty-one, a consultant
14 shall disclose to the trustee or trustees of a fund any compensation or
15 economic opportunity received in the prior twenty-four months from an
16 investment advisor that is recommended for selection by such consultant.
17 A consultant shall make this disclosure prior to the trustee or trustees
18 of a fund selecting an investment advisor for appointment.

19 4. Beginning January first, two thousand twenty-one, no contract, oral
20 or written, for consulting services shall be awarded by a trustee or
21 trustees of a fund without first requiring the consultant to make the
22 disclosures required by subdivision three of this section.

23 § 4. Section 8 of the state finance law is amended by adding two new
24 subdivisions 21 and 22 to read as follows:

25 21. a. When procuring or authorizing the procurement of any goods and
26 services, whether through a request for proposal or otherwise, be
27 authorized to incorporate preferences in the scoring process for busi-
28 nesses that:

29 (1) are a minority business enterprise or a woman-owned business
30 enterprise, as such terms are defined by section two hundred ten of the
31 economic development law;

32 (2) are at least fifty-one percent owned by a veteran or veterans or a
33 person or persons with a disability, as such terms are defined by
34 section two hundred ten of the economic development law; or

35 (3) have a record of support for increasing diversity and inclusion in
36 board membership, management, employment, philanthropy, and supplier
37 diversity, including investment professionals and investment sourcing.

38 b. Beginning with the fiscal year two thousand twenty-one, and at
39 least annually thereafter, report on his or her utilization of the busi-
40 nesses described in paragraph a of this subdivision. Such report shall
41 be published on the official website of the comptroller.

42 22. Review a financial institution's federal Community Reinvestment
43 Act rating, record, and current level of financial commitment to the
44 community when determining the eligibility of such financial institution
45 to participate in a banking contract, investment contract, investment
46 activity, or other financial program under the control or supervision of
47 the comptroller.

48 § 5. Subdivision 1 of section 423-c of the retirement and social secu-
49 rity law, as added by chapter 171 of the laws of 2010, is amended to
50 read as follows:

51 1. Within the discretion of the state comptroller and in accordance
52 with and subject to his or her fiduciary duties and obligations as trus-
53 tee of the common retirement fund and to the members, retirees and bene-
54 ficiaries of such fund and such other investment limitations as may be
55 prescribed by this chapter, the comptroller is authorized to establish
56 an MWBE asset management and financial institution strategy [~~including~~]

1 consistent with and in addition to his or her obligations under section
2 one hundred seventy-seven-b of this chapter, which shall include reason-
3 able goals for utilization of MWBE asset managers, MWBE financial insti-
4 tutions and MWBE financial and professional service firms, which strate-
5 gy shall include, but shall not be limited to, the following objectives:

6 (a) investing assets of the common retirement fund with MWBE asset
7 managers;

8 (b) subject to best execution: (i) conducting trades of public equity
9 securities with MWBE financial institutions; and (ii) conducting trades
10 of fixed-income securities through MWBE financial institutions;

11 (c) allocating investments of assets of the common retirement fund
12 either through: (i) direct investments in the equities and debt securi-
13 ties of MWBEs; or (ii) indirectly through special programs involving
14 MWBE asset managers; and

15 (d) awarding contracts for accounting, banking, financial advisory,
16 insurance, legal, research, valuation and other financial and profes-
17 sional services to MWBE financial institutions and other MWBE profes-
18 sional service firms.

19 § 6. Subdivision 1 of section 508-a of the education law, as added by
20 chapter 171 of the laws of 2010, is amended to read as follows:

21 1. Within the discretion of the retirement board and in accordance
22 with and subject to its fiduciary duties and obligations as trustees of
23 the ~~[teachers]~~ teachers' retirement system and to the members, retirees
24 and beneficiaries of such system and such other investment limitations
25 as may be prescribed by this chapter, the retirement board is authorized
26 to establish ~~[on]~~ an MWBE asset management and financial institution
27 strategy pursuant to section four hundred twenty-three-c of the retire-
28 ment and social security law ~~[including]~~ consistent with and in addition
29 to his or her obligations under section one hundred seventy-seven-b of
30 the retirement and social security law, which shall include reasonable
31 goals for utilization of MWBE asset managers, MWBE financial insti-
32 tutions and MWBE financial and professional services firms, as such
33 terms are defined in section one hundred seventy-six of the retirement
34 and social security law which strategy shall include, but shall not be
35 limited to, the following objectives:

36 a. investing assets of the teachers' retirement system with MWBE asset
37 managers;

38 b. subject to best execution, (1) conducting trades of public equity
39 securities with MWBE financial institutions and (2) conducting trades of
40 fixed-income securities through MWBE financial institutions;

41 c. allocating investments of assets of the ~~[teacher's]~~ teachers'
42 retirement system either through (1) direct investments in the equities
43 and debt securities of MWBEs or (2) indirectly through special programs
44 involving MWBE asset managers; and

45 d. awarding contracts for accounting, banking, financial advisory,
46 insurance, legal, research, valuation and other financial and profes-
47 sional services to MWBE financial institutions and other MWBE profes-
48 sional services firms.

49 As used in this section, the terms "MWBE asset manager", "MWBE finan-
50 cial institutions", "MWBE", "~~[fiduciary-controlled]~~ fiduciary-cont-
51 rolled entities", and "best execution" shall have the meanings specified
52 in section one hundred seventy-six of the retirement and social security
53 law, and shall be certified in a manner consistent with the provisions
54 of subdivision three of section four hundred twenty-three-c of the
55 retirement and social security law.

§ 7. Paragraph c of subdivision 2 of section 5 of the state finance law, as added by chapter 171 of the laws of 2010, is amended to read as follows:

c. Within the discretion of the deferred compensation board and in accordance with and subject to its fiduciary duty and obligations to the deferred compensation plan for state employees and to the members and beneficiaries of such plan and such other investment limitations as may be prescribed by this chapter, the deferred compensation board is authorized to establish an MWBE asset management and financial institution strategy ~~[including]~~ consistent with and in addition to his or her obligations under section one hundred seventy-seven-b of the retirement and social security law, which shall include reasonable goals for utilization of MWBE asset managers, MWBE financial institutions and MWBE professional service firms, which shall include, but shall not be limited to, the following objectives:

(i) conducting procurement procedures in a manner that will assure the inclusion of MWBE asset managers in any request for proposal or search process for asset management services undertaken in accordance with the rules and regulations and of the board;

(ii) subject to best execution policies, developing a strategy to (1) conduct trades of public equity securities with MWBE financial institutions and (2) conduct trades of fixed-income securities through MWBE financial institutions;

(iii) conducting procurement procedures in a manner that will assure the inclusion of MWBE financial institutions and other MWBE professional service firms in procurements for services that include accounting, banking, financial advisory, insurance, legal, research, valuation and other financial and professional services that are undertaken in accordance with the rules and regulations of the board;

(iv) cooperating with other fiduciary controlled entities and state agencies and offices to identify MWBE asset managers, MWBE financial institutions and MWBE professional service firms.

As used in this section, the terms "MWBE asset manager", "MWBE financial institutions", "MWBE", "fiduciary-controlled entities" and "best execution" shall have the meanings specified in section one hundred seventy-six of the retirement and social security law.

§ 8. Subdivision 1 of section 87-i of the workers' compensation law, as added by chapter 171 of the laws of 2010, is amended to read as follows:

1. Within the discretion of the commissioners of the state insurance fund and in accordance with and subject to their fiduciary duty and obligations as trustees of the state insurance fund and to the beneficiaries of such fund and such other investment limitations as may be prescribed by this chapter, the commissioners are authorized to establish an MWBE asset management and financial institution strategy ~~[including]~~ consistent with and in addition to their obligations under section one hundred seventy-seven-b of the retirement and social security law, which shall include reasonable goals for utilization of MWBE asset managers, MWBE financial institutions and MWBE financial and professional service firms, which strategy shall include, but shall not be limited to, the following objectives:

(a) investing assets of the state insurance fund with MWBE asset managers;

(b) subject to best execution, (1) conducting trades of public equity securities with MWBE financial institutions; and (2) conducting trades of fixed-income securities through MWBE financial institutions;

1 (c) allocating investments of assets of the state insurance fund
2 either through (1) direct investments in the equities and debt securi-
3 ties of MWBEs; or (2) indirectly through special programs involving MWBE
4 asset managers; and

5 (d) awarding contracts for accounting, banking, financial advisory,
6 insurance, legal, research, valuation and other financial and profes-
7 sional services to MWBE financial institutions and other MWBE profes-
8 sional service firms.

9 As used in this section, the terms "MWBE asset manager", "MWBE finan-
10 cial institutions", "MWBE", "fiduciary-controlled entities" and "best
11 execution" shall have the meanings specified in section one hundred
12 seventy-six of the retirement and social security law and shall be
13 certified in a manner consistent with the provisions of subdivision
14 three of section four hundred twenty-three-c of the retirement and
15 social security law.

16 § 9. This act shall take effect on the first of January next succeed-
17 ing the date on which it shall have become a law.