STATE OF NEW YORK

3267

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sens. COMRIE, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

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 Assembly, do enact as follows:

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

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

(a) investing assets of such fund with MWBE asset managers;

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

(c) allocating investments of assets of such fund either through: (i) direct investments in the equities and debt securities of MWBEs; or (ii) indirectly through special programs involving MWBE asset managers; or

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

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(d) awarding contracts for accounting, banking, financial advisory, insurance, legal, research, valuation, and other financial and professional services to MWBE financial institutions and other MWBE professional service firms.

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

3. Within sixty days of the end of each fiscal year following the effective date of this section, the trustee or trustees of a fund shall report to the governor, legislature, and chief diversity officer of the state of New York on the participation of MWBE asset managers, MWBE financial institutions, and MWBE professional service providers in investment and brokerage transactions with or as providers of services for such fund, including a comparative analysis of such activity relative to such activity with all asset managers, financial institutions, and professional service providers for the relevant period, and on the progress and success of the efforts undertaken during such period to achieve the aspirational goals under subdivision one of this section to the greatest extent feasible within the bounds of financial and fiduciary prudence. Each report shall be simultaneously published on the website of such fund for not less than sixty days following its release to the governor and the other recipients named in this subdivision.

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

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

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

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

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

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

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

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

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

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

(a) "compensation" means any money, thing of value, or economic benefit conferred on, or received by, a consultant in return for services rendered, or to be rendered.

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

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

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

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

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

21. a. When procuring or authorizing the procurement of any goods and services, whether through a request for proposal or otherwise, be authorized to incorporate preferences in the scoring process for businesses that:

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

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

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

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

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

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

1. Within the discretion of the state comptroller and in accordance with and subject to his or her fiduciary duties and obligations as trustee of the common retirement fund and to the members, retirees and bene-

ficiaries of such fund and such other investment limitations as may be prescribed by this chapter, the comptroller 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 this chapter, 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 common retirement fund with MWBE asset managers;

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

(c) allocating investments of assets of the common retirement fund either through: (i) direct investments in the equities and debt securities of MWBEs; or (ii) indirectly through special programs involving MWBE asset managers; and

(d) awarding contracts for accounting, banking, financial advisory, insurance, legal, research, valuation and other financial and professional services to MWBE financial institutions and other MWBE professional service firms.

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

1. Within the discretion of the retirement board and in accordance with and subject to its fiduciary duties and obligations as trustees of the [~~teachers~~] **teachers'** retirement system and to the members, retirees and beneficiaries of such system and such other investment limitations as may be prescribed by this chapter, the retirement board is authorized to establish [~~on~~] **an** MWBE asset management and financial institution strategy pursuant to section four hundred twenty-three-c of the retirement and social security law [~~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 financial and professional services firms, as such terms are defined in section one hundred seventy-six of the retirement and social security law which strategy shall include, but shall not be limited to, the following objectives:

a. investing assets of the teachers' retirement system 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;

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

d. awarding contracts for accounting, banking, financial advisory, insurance, legal, research, valuation and other financial and professional services to MWBE financial institutions and other MWBE professional services firms.

As used in this section, the terms "MWBE asset manager", "MWBE financial institutions", "MWBE", "[~~fidiuciary-controlled~~] **fiduciary-controlled** entities", and "best execution" shall have the meanings specified in section one hundred seventy-six of the retirement and social security law, and shall be certified in a manner consistent with the provisions

of subdivision three of section four hundred twenty-three-c of the 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;

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

(d) awarding contracts for accounting, banking, financial advisory, insurance, legal, research, valuation and other financial and professional services to MWBE financial institutions and other 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 and shall be certified in a manner consistent with the provisions of subdivision three of section four hundred twenty-three-c of the retirement and social security law.

§ 9. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.