

A10495 Summary: BILL NO A10495

Relates to the use of MWBE investments for and aspirational goal of at least twenty percent of each New York state fund, to the greatest extent feasible within the bounds of financial and fiduciary prudence.

A10495 Text:

STATE OF NEW YORK

10495

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

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:

- 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-
26 sional services to MWBE financial institutions and other MWBE profes-
27 sional service firms.

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

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A. 10495

2

1 2. The trustee or trustees of a fund shall be authorized to establish
2 additional aspirational goals to the goals directed by subdivision one
3 of this section.
4 3. Within sixty days of the end of each fiscal year following the
5 effective date of this section, the trustee or trustees of a fund shall
6 report to the governor, legislature, and chief diversity officer of the
7 state of New York on the participation of MWBE asset managers, MWBE
8 financial institutions, and MWBE professional service providers in
9 investment and brokerage transactions with or as providers of services
10 for such fund, including a comparative analysis of such activity rela-
11 tive to such activity with all asset managers, financial institutions,
12 and professional service providers for the relevant period, and on the
13 progress and success of the efforts undertaken during such period to
14 achieve the aspirational goals under subdivision one of this section to
15 the greatest extent feasible within the bounds of financial and fiduci-
16 ary prudence. Each report shall be simultaneously published on the
17 website of such fund for not less than sixty days following its release
18 to the governor and the other recipients named in this subdivision.
19 § 2. The retirement and social security law is amended by adding a new
20 section 177-e to read as follows:
21 § 177-e. Required disclosures from consultants; MWBEs and businesses
22 owned by persons with disabilities. 1. As used in this section, the term
23 "disability" shall have the same meaning as defined by section two
24 hundred ten of the economic development law.
25 2. No later than January first, two thousand twenty-one, and each
26 January first thereafter, each consultant retained by the trustee or
27 trustees of a fund shall disclose to the trustee or trustees of such
28 fund the total number of searches for investment services made by such
29 consultant in the previous calendar year including all such searches:
30 (a) that included (i) MWBE asset managers, (ii) MWBE financial
31 institutions, (iii) MWBE financial or professional service firms, or
32 (iv) any business enterprise at least fifty-one percent owned by indi-
33 viduals with disabilities;
34 (b) in which the consultant recommended for selection (i) MWBE asset
35 managers, (ii) MWBE financial institutions, (iii) MWBE financial or
36 professional service firms, or (iv) any business enterprise at least

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

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

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

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

52 § 177-f. Required disclosures from consultants; compensation and
53 economic opportunity received. 1. For the purposes of this section, the
54 following terms shall have the following meanings:

A. 10495

3

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]

A. 10495

4

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 entities", and "best
51 execution" shall have the meanings specified in section one hundred
52 seventy-six of the retirement and social security law, and shall be
53 certified in a manner consistent with the provisions of subdivision
54 three of section four hundred twenty-three-c of the retirement and
55 social security law.

A. 10495

5

1 § 7. Paragraph c of subdivision 2 of section 5 of the state finance
2 law, as added by chapter 171 of the laws of 2010, is amended to read as
3 follows:
4 c. Within the discretion of the deferred compensation board and in
5 accordance with and subject to its fiduciary duty and obligations to the
6 deferred compensation plan for state employees and to the members and
7 beneficiaries of such plan and such other investment limitations as may
8 be prescribed by this chapter, the deferred compensation board is
9 authorized to establish an MWBE asset management and financial institu-

10 tion strategy [including] consistent with and in addition to his or her
11 obligations under section one hundred seventy-seven-b of the retirement
12 and social security law, which shall include reasonable goals for utili-
13 zation of MWBE asset managers, MWBE financial institutions and MWBE
14 professional service firms, which shall include, but shall not be limit-
15 ed to, the following objectives:

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

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

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

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

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

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

40 1. Within the discretion of the commissioners of the state insurance
41 fund and in accordance with and subject to their fiduciary duty and
42 obligations as trustees of the state insurance fund and to the benefi-
43 ciaries of such fund and such other investment limitations as may be
44 prescribed by this chapter, the commissioners are authorized to estab-
45 lish an MWBE asset management and financial institution strategy
46 [including] consistent with and in addition to their obligations under
47 section one hundred seventy-seven-b of the retirement and social securi-
48 ty law, which shall include reasonable goals for utilization of MWBE
49 asset managers, MWBE financial institutions and MWBE financial and
50 professional service firms, which strategy shall include, but shall not
51 be limited to, the following objectives:

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

54 (b) subject to best execution, (1) conducting trades of public equity
55 securities with MWBE financial institutions; and (2) conducting trades
56 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.