

## New York State Finance Law

§ 5. Deferred compensation. 1. The deferred compensation board is hereby established, to consist of one member appointed by the governor, one member appointed by the temporary president of the senate and one member appointed by the speaker of the assembly. The board shall adopt rules and regulations regarding the standards and requirements of all deferred compensation plans established pursuant to this section, including selection of financial organizations for investment purposes.

2. a. Notwithstanding any other provision of law, the deferred compensation board shall establish a deferred compensation plan, under the provisions of section four hundred fifty-seven of the internal revenue code and regulations adopted pursuant thereto, for all state employees and shall promulgate rules and regulations as soon as is reasonably practicable following the appointment of all members of the board for the appropriate administration of such a plan.

b. The board shall enter into written agreements with one or more financial organizations to administer the deferred compensation plan for state employees and to invest funds held pursuant to such plan. Any such written agreement and deferred compensation plan shall conform with the provisions of section four hundred fifty-seven of the internal revenue code and regulations adopted pursuant thereto.

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 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.

d. The board is also authorized to:

(i) periodically provide notice of the existence of such strategy so that MWBE asset managers, MWBE financial institutions and other MWBE professional service firms are made aware of the opportunities made available pursuant to this strategy;

(ii) within sixty days of the end of each fiscal year following the effective date of this paragraph, the board shall report to the governor, legislature and the 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 the deferred compensation plans, 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 the success of the efforts undertaken during such period to achieve the goals of such strategy. Each report shall be simultaneously published on the website of the deferred compensation plans for not less than sixty days following its release to the governor and the other recipients named above;

(iii) work with the other fiduciary-controlled entities to create a database of such MWBE entities; and

(iv) periodically, but not less than annually, hold a conference to promote such strategy in conjunction with the other fiduciary-controlled entities.

e. The rules and regulations promulgated by the board shall establish standards for the selection of financial organizations, authorized to do business in this state, to participate in such plans, including, but not limited to, the following criteria:

(i) rates of commission, brokerage and other fees, administrative expenses and related service charges imposed by the financial organization,

(ii) variety of types of investment opportunities offered by the financial organization and/or among the financial organizations selected and the ability to transfer among such opportunities,

(iii) the stability of the financial organization as evidenced by experience, reputation, assets and holdings, ability to guarantee specific rates of return,

(iv) ability to comply with reporting requirements to the board and to participants in such a plan, and

(v) such other factors which would be considered by a prudent investor in such a plan.

f. The president of the state civil service commission, subject to the rules and regulations of the board, shall provide assistance to any public employer as is appropriate to the provisions of this section.

g. At the request of a state employee the comptroller shall, by payroll deduction, defer the payment of part of the compensation of such employee as provided in a written statement by the employee and transfer the amount so deferred to the authorized financial organization.

h. The board may hire such employees as it deems necessary and prudent to assist in its administration. Such employees may be either: (i) in the unclassified service of the state and, notwithstanding any other provision of law to the contrary, shall be designated managerial and, as such, eligible for benefits provided by subdivision two of section eleven and subdivision (a) of section twelve of chapter four hundred sixty of the laws of nineteen hundred eighty-two, as amended; section one hundred fifty-eight of the civil service law; eligible to participate in the state deferred compensation plan, the New York state and local employees' retirement system; the

health insurance plan for state employees; and subject to coverage under sections seventeen and eighteen of the public officers law, or (ii) hired not as state employees but hired on a contractual basis.

3. a. Notwithstanding any other provision of law, every public employer in the state may provide a deferred compensation plan for its employees in accordance with standards, rules and regulations of the deferred compensation board and the provisions of section four hundred fifty-seven of the internal revenue code and regulations adopted pursuant thereto.

b. For the purposes of this section, the term "public employer" shall mean: a county, city, town, village or any other political subdivision as defined in section one hundred thirty-one of the retirement and social security law or civil division of the state; a school district or any governmental entity operating a public school, college or university; a public improvement or special district; a public authority, commission or public benefit corporation; any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state or any instrumentality jointly created by this state and any other state or states.

c. Subject to the rules and regulations promulgated by the board, a public employer may establish a deferred compensation plan and enter into written agreements with one or more financial organizations to administer such deferred compensation plan for its employees and to invest the funds held pursuant to such plan or such employer may elect participation in the deferred compensation plan provided for state employees. At the request of an employee of any such public employer, the chief fiscal officer or other appropriate officer of the public employer shall, by payroll deduction, defer the payment of part of the compensation of such employee, as provided in a written statement by the employee, and transfer the amount so deferred to the authorized financial organization.

4. Notwithstanding the other provisions of this section, state employees, otherwise eligible to participate in the deferred compensation plan, who are in a negotiating unit represented by an employee organization which negotiates pursuant to article fourteen of the civil service law shall not be permitted to participate under the provisions of this section until such time as such participation is authorized pursuant to a collectively negotiated agreement between the state and the employee organization; provided, however, that the state need only negotiate whether or not such employees shall be included in such plan.

5. Should a public employer elect to provide or elect to participate in a deferred compensation plan for employees otherwise eligible to participate in the plan, employees in a negotiating unit represented by an employee organization which negotiates pursuant to article fourteen of the civil service law shall not be permitted to participate under the provisions of this section until such time as such participation is authorized pursuant to a collectively negotiated agreement between the public employer and the employee organization; provided, however, that the public employer need only negotiate whether or not such employees shall be included in such plan.

6. To the extent permitted by section four hundred fifty-seven of the internal revenue code and regulations adopted pursuant thereto, any compensation deferred by a state employee or an employee of a public employer under an eligible deferred compensation plan established pursuant to this section shall be considered part of annual compensation by any retirement system or plan to which the state or public employer contributes on behalf of said employee. However, this in no way shall be construed to supersede the provision of section four hundred thirty-one of the retirement and social security law or any other similar provision of law which limits the salary base for computing retirement benefits payable by a public retirement system.

7. Any benefit from a deferred compensation plan established pursuant to this section shall be in addition to any retirement benefits provided a state or public employee under any other provision of law.

8. a. The term "financial organization" shall mean an organization authorized to do business in the state of New York and (A) which is an authorized fiduciary to act as a trustee pursuant to the provisions of an act of congress entitled "Employee Retirement Income Security Act of 1974" as such provisions may be amended from time to time, or an insurance company; and (B) (i) is licensed or chartered by the state insurance department, (ii) is licensed or chartered by the state banking department, (iii) is chartered by an agency of the federal government, (iv) is subject to the jurisdiction and regulation of the securities and exchange commission of the federal government, or (v) is any other entity otherwise authorized to act in this state as a trustee pursuant to the provisions of an act of congress entitled "Employee Retirement Income Security Act of 1974" as such provisions may be amended from time to time.

b. The term "state employee" as used in this section shall mean an employee or officer of the state, whose salary is paid directly by the state and, for the limited purposes of this section shall be deemed to include officers or employees in positions in the institutions under the management and control of Cornell and Alfred universities, as representatives of the board of trustees of the state university.