ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4765

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2018

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4765.

This bill imposes conditions on domestic equity investments in the private real estate, private equity, and private infrastructure asset classes in which the Division of Investment has more than a 50 percent interest. The bill also imposes requirements related to the protection of public sector jobs and the selection of external managers.

With respect to construction-related activity financed by the Division's investments, operators of such activity must use good faith efforts to ensure that responsible contractors are included in the bidding and selection of contractors and subcontractors. A responsible contractor is one which, among other requirements, submits to the property or external manager a responsible contractor self-certification form; provides the Director of the Division of Investment and the external manager with responsible contractor documentation; and pays workers fair wages and fair benefits including employer-supported family health care coverage, pension benefits and apprenticeship training programs.

With respect to long-term operations financed by the Division's investments, operators must make a good faith effort to secure an agreement with a bona fide labor organization requesting to enter in to such an agreement solely with respect to such operations in which the labor organization agrees not to strike, picket, boycott, or take economic action against the operations for the duration of the investment. A bona fide labor organization is one which is a member of either the AFL-CIO or Change to Win, and has at least 100 collective bargaining agreements or 50,000 members in the same industry as the long-term operations.

For similar investments in which the Division has a 50 percent or less interest, the bill requires the Division to encourage external managers to follow the above mentioned practices and shall give preference in the selection of external managers and placement of additional investments to those which provide the best level of return at an acceptable level of risk and follow such practices.

The bill also prohibits the Division from approving any investment that has the potential to eliminate public sector jobs, would pose a reputational risk to the State-administered retirement systems, or could bring public or regulatory scrutiny to the retirement systems.

The bill further requires the Director to exercise due diligence in the selection of external managers. The Director must consider at least the following factors about the external manager and companies in its current and historical portfolios: any violations, fines, citations, or findings by a state or federal regulatory agency, including but not limited to, environmental fines and violations, unfair labor practices, or OSHA fines and violations; the record of securing labor peace agreements with labor organizations; disputes with labor organizations in the previous five years and the outcomes of such disputes; any complaints about the external manager, its portfolio companies or construction contractors received from concerned citizens or organizations; and whether the external manager proposes an investment strategy that is premised on, or has the potential to create, significant public sector job loss.

With respect to prospective external managers, the bill requires they be of good character and have demonstrated observance of local, state, and national laws. The managers are to be evaluated for their record of compliance with the policies, including any responsible contractor policies of public pension plans for which they serve or have served as external managers and are required to disclose any instances of non-compliance with such policies and to certify that they and their portfolio companies are not out of compliance with any such policies at the time of any proposed investment by the Division. External managers must demonstrate a past practice of, and capacity for, managing risks, including, without limitation, investment risks, interest rate risks, compliance risks, the risk of labor disputes, and the risk of malfeasance or ineptitude on the part of contractors, subcontractors, or operators. Whenever possible, external managers are to be chosen by competitive bidding and evaluated on their likelihood of producing competitive, risk-adjusted rates of return.

Finally, the bill requires the Division to annually report on investments held in violation of the requirements of this bill.

As reported, this bill is identical to Senate Bill No. 2663, as amended and reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot reliably assess the impact on State and local government finances of requiring pension and annuity fund investments to adhere to the requirements prescribed in the bill.

The bill does allow for the Director of the Division of Investment and the State Investment Council to take appropriate action to divest from any investment held in violation of the provisions of the bill when efforts to cure the violation are unsuccessful, but the director is not required to divest.

Therefore, any fiscal impact would depend on future investment decisions by the division and conditions prevailing in financial markets, which the OLS cannot anticipate. In general, any financial gain or loss to the pension funds could ultimately affect the amount of actuarially determined employer contributions to the funds by the State and local governments.