

ASSEMBLY, No. 5584

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 5, 2021

Sponsored by:

Assemblyman VINCENT MAZZEO

District 2 (Atlantic)

SYNOPSIS

Subjects domestic equity investments of the Division of Investment to certain requirements, imposes requirements related to selection of external managers and protection of public sector jobs.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning investments of State-administered pension and
2 annuity funds and supplementing P.L.1950, c.270 (C.52:18A-79
3 et seq.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. a. For domestic equity investments in the private real
9 estate, private equity, and private infrastructure asset classes,
10 including partnerships, joint ventures, co-investment vehicles,
11 commingled investments, and direct investments entered into after
12 the effective date of P.L. , c. (C.) (pending before the
13 Legislature as this bill) in which the Division of Investment has an
14 equity interest greater than 50 percent, either directly or through
15 one or more external managers, the Director of the Division of
16 Investment or the external manager shall require that all developers
17 and operators of enterprises thus financed must as a condition of the
18 Division's funding of the investment agree to, and abide by, the
19 following requirements:

20 (1) with respect to any construction-related activities financed
21 by the investment, to use good faith efforts to ensure that
22 responsible contractors are included in the bidding by, and selection
23 of, all contractors and subcontractors at any tier performing any
24 construction, delivery to the job site of major construction
25 materials, maintenance, repair, or restoration, including, without
26 limitation, alterations, additions, improvements, painting,
27 installations of fixtures, mechanical, electrical, plumbing, or with
28 respect to any other construction or installation-related work, and
29 structures, equipment and systems fabricated for a specific job site.
30 A contractor shall be excluded from bidding on projects if such
31 contractor or any of its senior officials has been debarred in the 36
32 months preceding the bidding deadline by a governmental authority
33 for failure to pay prevailing wages or benefits on any prior job for
34 which it is required by law. A responsible contractor is one which:
35 submits to the property or external manager a responsible contractor
36 self-certification on a form acceptable to the Director;
37 communicates and furnishes this section to subcontractors; provides
38 the Director and the external manager with responsible contractor
39 documentation; selects subcontractors in a manner consistent with
40 this section; and pays workers fair wages and fair benefits including
41 employer-supported family health care coverage, pension benefits
42 and apprenticeship training programs, based on relevant market
43 factors that include the nature and location of the project,
44 comparable job or trade classifications, and the scope and
45 complexity of the work.

46 (2) with respect to any long-term operations financed by the
47 investment, that any operator of such operations shall make a good
48 faith effort to secure an agreement with a bona fide labor

1 organization requesting to enter in to such an agreement solely with
2 respect to such operations in which the labor organization agrees
3 not to strike, picket, boycott, or take economic action against the
4 operations for the duration of the investment. A bona fide labor
5 organization is one which is a member of either the AFL-CIO or
6 Change to Win, and has at least 100 collective bargaining
7 agreements or 50,000 members in the same industry as the long-
8 term operations.

9 b. For domestic equity investments in the private real estate,
10 private equity and private infrastructure asset classes, including
11 partnerships, joint ventures, co-investment vehicles, commingled
12 investments, and direct investments entered into after the effective
13 date of P.L. , c. (C.) (pending before the Legislature as this
14 bill) in which the Division of Investment has an equity interest
15 equal to or less than 50 percent, the Director of the Division of
16 Investment shall encourage external managers to follow the
17 practices in paragraphs (1) and (2) of subsection a. of this section
18 and shall give preference in the selection of external managers and
19 placement of additional investments to those which provide the best
20 level of return at an acceptable level of risk and follow such
21 practices.

22
23 2. The Director of the Division of Investment and the State
24 Investment Council shall not approve any investment that has the
25 potential to eliminate public sector jobs, would pose a reputational
26 risk to the State-administered retirement systems, or could bring
27 public or regulatory scrutiny to the retirement systems. Before
28 presenting any investment to the State Investment Council for
29 possible investment, the Division of Investment shall identify any
30 features of the proposed investment that could potentially lead to
31 significant loss of public sector jobs, pose reputational risks, or
32 subject the retirement systems to regulatory scrutiny.

33
34 3. The Director of the Division of Investment, subject to the
35 direction of the State Investment Council, shall exercise due
36 diligence in the selection of external managers. The Director shall
37 consider at least the following factors about the external manager
38 and companies in its current and historical portfolios: any
39 violations, fines, citations, or findings by a state or federal
40 regulatory agency, including but not limited to, environmental fines
41 and violations, unfair labor practices, or OSHA fines and violations;
42 the record of securing labor peace agreements with labor
43 organizations; disputes with labor organizations in the previous five
44 years and the outcomes of such disputes; any complaints about the
45 external manager, its portfolio companies or construction
46 contractors received from concerned citizens or organizations; and
47 whether the external manager proposes an investment strategy that
48 is premised on, or has the potential to create, significant public

1 sector job loss. Prospective external managers and their portfolio
2 companies shall be of good character and shall have demonstrated
3 observance of local, state, and national laws (including, by way of
4 illustration, those related to insurance, taxes, labor, anti-
5 discrimination, environmental, and occupational health and safety).
6 External managers and their portfolio companies shall be evaluated
7 for their record of compliance with the policies, including any
8 responsible contractor policies of public pension plans for which
9 they serve or have served as external managers and shall be
10 required to disclose any instances of non-compliance with such
11 policies and to certify that they and their portfolio companies are
12 not out of compliance with any such policies at the time of any
13 proposed investment by the Division of Investment. External
14 managers shall have demonstrated a past practice of, and capacity
15 for, managing risks, including, without limitation, investment risks,
16 interest rate risks, compliance risks, the risk of labor disputes, and
17 the risk of malfeasance or ineptitude on the part of contractors,
18 subcontractors, or operators. Whenever possible, external managers
19 shall be chosen by competitive bidding and evaluated on their
20 likelihood of producing competitive, risk-adjusted rates of return.

21
22 4. The report of the State Investment Council issued pursuant
23 to section 13 of P.L.1950, c.270 (C.52:18A-91) on the performance
24 of external managers shall include identification of all investments
25 held as of the date of the report that are in violation of sections 1
26 and 3 of P.L. , c. (C.) (pending before the Legislature as this
27 bill). The State Investment Council and the Director of the Division
28 of Investment may take appropriate action to sell, redeem, divest, or
29 withdraw any investment held in violation of sections 1 and 3 of
30 P.L. , c. (C.) (pending before the Legislature as this bill)
31 when efforts to cure the violation are unsuccessful. This section
32 shall not be construed to authorize the premature or otherwise
33 imprudent sale, redemption, divestment, or withdrawal of an
34 investment.

35
36 5. This act shall take effect 180 days following the date of
37 enactment except the director may take any anticipatory
38 administrative action in advance as shall be necessary for the
39 implementation of this act.

40 41 42 STATEMENT

43
44 This bill imposes conditions on domestic equity investments in
45 the private real estate, private equity, and private infrastructure
46 asset classes in which the Division of Investment has more than a
47 50 percent interest. The bill also imposes requirements related to

1 the protection of public sector jobs and the selection of external
2 managers.

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

14 With respect to long-term operations financed by the Division's
15 investments, operators must make a good faith effort to secure an
16 agreement with a bona fide labor organization requesting to enter in
17 to such an agreement solely with respect to such operations in
18 which the labor organization agrees not to strike, picket, boycott, or
19 take economic action against the operations for the duration of the
20 investment. A bona fide labor organization is one which is a
21 member of either the AFL-CIO or Change to Win, and has at least
22 100 collective bargaining agreements or 50,000 members in the
23 same industry as the long-term operations.

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

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

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

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

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