SENATE, No. 857

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
Senator TROY SINGLETON
District 7 (Burlington)

Co-Sponsored by:
Senator Greenstein

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

Introduced Pending Technical Review by Legislative Counsel.

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

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

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

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

(2) with respect to any long-term operations financed by the investment, that any operator of such operations shall 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.

b. For domestic equity investments in the private real estate, private equity and private infrastructure asset classes, including partnerships, joint ventures, co-investment vehicles, commingled investments, and direct investments entered into after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) in which the Division of Investment has an equity interest equal to or less than 50 percent, the Director of the Division of Investment shall encourage external managers to follow the practices in paragraphs (1) and (2) of subsection a. of this section 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.

2. The Director of the Division of Investment and the State Investment Council shall not approve 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. Before presenting any investment to the State Investment Council for possible investment, the Division of Investment shall identify any features of the proposed investment that could potentially lead to significant loss of public sector jobs, pose reputational risks, or subject the retirement systems to regulatory scrutiny.

3. The Director of the Division of Investment, subject to the direction of the State Investment Council, shall exercise due diligence in the selection of external managers. The Director shall 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. Prospective external managers and their portfolio companies shall be of good character and shall have demonstrated observance of local, state, and national laws (including, by way of illustration, those related to insurance, taxes, labor, anti-discrimination, environmental, and occupational health and safety). External managers and their portfolio companies shall 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 shall be 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 of Investment. External managers shall have demonstrated 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 shall be chosen by competitive bidding and evaluated on their likelihood of producing competitive, risk-adjusted rates of return.

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

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

STATEMENT

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.