

[First Reprint]

ASSEMBLY, No. 4814

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED MAY 18, 2017

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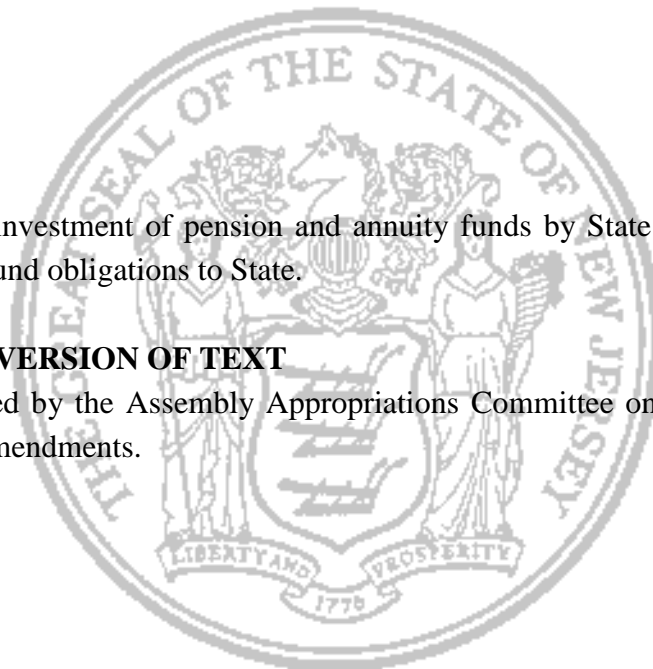
Assemblymen Giblin, O'Scanlon, Space, Gusciora, Assemblywoman Pinkin and Senator Oroho

SYNOPSIS

Prohibits investment of pension and annuity funds by State in entities that avoid Superfund obligations to State.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 18, 2017, with amendments.



(Sponsorship Updated As Of: 1/9/2018)

1 AN ACT concerning the investment by the State of pension and
2 annuity funds in entities that avoid their Superfund obligations to
3 the State and supplementing P.L.1950, c.270 (C.52:18A-79 et
4 seq.).

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

8
9 1. The Legislature finds and declares that:

10 The federal Comprehensive Environmental Response,
11 Compensation, and Liability Act (CERCLA), commonly known as
12 Superfund, provides for the cleanup of some of the nation's most
13 contaminated hazardous waste sites by assigning responsibility for
14 the expense of the cleanup to the entity that caused the
15 contamination, so that taxpayers and residents are not forced to pay
16 for very costly remediation.

17 Because New Jersey has a long history of chemical and other
18 industrial manufacturing, the State has more Superfund sites than
19 any other state in the country, making cleanup and remediation of
20 these Superfund sites particularly critical for the well-being of the
21 State's residents.

22 One example of a Superfund site in the State is the site in
23 Newark where, for several decades, Diamond Alkali Company,
24 purchased later by Maxus Energy Corporation, manufactured
25 agricultural chemicals, including the herbicide known as Agent
26 Orange. The United States Environmental Protection Agency
27 (EPA) found high levels of dioxin at the Diamond Alkali facility
28 and placed the site on the Superfund National Priorities List in
29 1984. Several other hazardous substances and semi-volatile and
30 volatile compounds were also discovered at the site.

31 The hazardous substances and semi-volatile and volatile
32 compounds have contaminated the environment at and around the
33 site, including the soil, groundwater, air, surface water, and
34 building structures at the site, as well as caused widespread
35 contamination in the Passaic River. The contamination in the river
36 is so severe that there are prohibitions and advisories on fish and
37 crab consumption in the area.

38 Subsequent to the designation of the Superfund site, the
39 Argentinian state-owned oil company, YPF S.A., acquired Maxus
40 Energy Corporation.

41 In March 2016, the EPA announced its finding that remediation
42 of the Diamond Alkali site would cost \$1.38 billion.

43 Three months following the EPA's announcement, YPF S.A.
44 placed Maxus Energy Corporation into bankruptcy, ultimately
45 stripping it of its assets and rendering it unable to fulfill its
46 Superfund obligations for the Diamond Alkali site. Nevertheless,
47 YPF S.A. remains a profitable business.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted December 18, 2017.

1 New Jersey has a significant interest in ensuring these Superfund
2 sites no longer post a threat to its residents, and if responsible
3 parties are able to avoid the expense of a cleanup of Superfund sites
4 without consequence, then the State should not allow those parties
5 to continue to profit from the State's investments.

6 By prohibiting the Department of the Treasury from investing in
7 these entities, responsible parties that avoid their Superfund
8 obligations may realize their actions are not without consequence
9 and perhaps will be deterred from doing so in the future.

10
11 2. a. Notwithstanding any provision of law to the contrary, no
12 assets of any pension or annuity fund under the jurisdiction of the
13 Division of Investment in the Department of the Treasury, or its
14 successor, shall be invested in any business, or country or its
15 instrumentality, ¹or any such entity that has an equity tie with any
16 of the aforesaid ¹or business affiliate¹, ¹if¹ that ¹business¹ has been
17 identified as a responsible party, with or without adjudication or
18 other finding of responsibility, by the United States Environmental
19 Protection Agency in accordance with the Comprehensive
20 Environmental Response, Compensation, and Liability Act
21 (CERCLA), 42 U.S.C. s.9601 et seq., for a Superfund site in the
22 State, upon that business entity, country or country's
23 instrumentalities filing for bankruptcy ¹or otherwise¹ rendering
24 that ¹business ¹company¹, or country, or country's instrumentality
25 incapable of complying with its obligations, in whole or in part, for
26 a Superfund site in the State for which it has been identified as a
27 responsible party ¹, when that bankruptcy filing is in direct
28 anticipation of or in direct response to a finding of responsibility by
29 the United States Environmental Protection Agency in accordance
30 with CERCLA for a Superfund site in the State¹.

31 As used in this act, ¹["equity tie"] ¹"business affiliate"¹ means an
32 ¹["ownership stake or joint venture"] entity that directly or indirectly
33 owns, controls, or holds with power to vote 20 percent or more of
34 the outstanding voting securities of the debtor, other than an entity
35 that holds such securities (1) in a fiduciary or agency capacity
36 without sole discretionary power to vote on such securities; or (2)
37 solely to secure a debt if that entity has not in fact exercised the
38 power to vote¹.

39 b. The ¹["State Investment Council and the"]¹ Director of the
40 Division of Investment, after consulting with an independent
41 research firm ¹["that specializes in global security risk for portfolio
42 determinations selected by the State Treasurer"]¹, shall take
43 appropriate action to sell, redeem, divest, or withdraw ¹["any
44 investment"] investments¹ held in violation of subsection a. of this
45 section. This section shall not be construed to require the premature
46 or otherwise imprudent sale, redemption, divestment, or withdrawal
47 of an investment, but such sale, redemption, divestment, or
48 withdrawal shall be completed not later than three years following

1 the effective date of this act, P.L. , c. (C.) (pending before
2 the Legislature as this bill) ¹or initial identification of a business, or
3 country, or country's instrumentality in accordance with this
4 section. Upon identification, and prior to any sale, redemption,
5 divestment, or withdrawal of an investment, the director shall notify
6 the business, or country, or country's instrumentality that it is in
7 violation of this act, P.L. , c. (C.) (pending before the
8 Legislature as this bill), and inform the business of the appeal
9 process¹.

10 c. Within ¹~~60~~ ¹⁸⁰ days after the effective date of this act,
11 P.L. , c. (C.) (pending before the Legislature as this bill),
12 the Director of the Division of Investment shall file with the
13 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
14 19.1), a report of all investments held as of the effective date that
15 are in violation of subsection a. of this section. Every year
16 thereafter, the director shall report on all investments sold,
17 redeemed, divested, or withdrawn in compliance with subsection b.
18 of this section.

19 Each report after the initial report shall provide a description of
20 the progress that the division has made since the previous report
21 and since the enactment of this act, P.L. , c. (C.) (pending
22 before the Legislature as this bill) in implementing subsection b. of
23 this section.

24 d. The members of the State Investment Council, jointly and
25 individually, and State officers and employees involved therewith,
26 shall be indemnified and held harmless by the State of New Jersey
27 from all claims, demands, suits, actions, damages, judgments, costs,
28 charges, and expenses, including court costs and attorney's fees, and
29 against all liability, losses, and damages that these council
30 members, and State officers and employees, may sustain by reason
31 of any decision to restrict, reduce, or eliminate investments
32 pursuant to this act.

33

34 3. This act shall take effect immediately.