

SENATE, No. 2054

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:
Senator JAMES BEACH
District 6 (Burlington and Camden)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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-
4 79 et 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.

1 New Jersey has a significant interest in ensuring these Superfund
2 sites no longer pose 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, or business affiliate, if that business has been
16 identified as a responsible party, with or without adjudication or
17 other finding of responsibility, by the United States Environmental
18 Protection Agency in accordance with the Comprehensive
19 Environmental Response, Compensation, and Liability Act
20 (CERCLA), 42 U.S.C. s.9601 et seq., for a Superfund site in the
21 State, upon that business entity, country or country's
22 instrumentalities filing for bankruptcy rendering that business, or
23 country, or country's instrumentality incapable of complying with
24 its obligations, in whole or in part, for a Superfund site in the State
25 for which it has been identified as a responsible party, when that
26 bankruptcy filing is in direct anticipation of or in direct response to
27 a finding of responsibility by the United States Environmental
28 Protection Agency in accordance with CERCLA for a Superfund
29 site in the State.

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

37 b. The Director of the Division of Investment, after consulting
38 with an independent research firm, shall take appropriate action to
39 sell, redeem, divest, or withdraw investments held in violation of
40 subsection a. of this section. This section shall not be construed to
41 require the premature or otherwise imprudent sale, redemption,
42 divestment, or withdrawal of an investment, but such sale,
43 redemption, divestment, or withdrawal shall be completed not later
44 than three years following the effective date of this act,
45 P.L. , c. (C.) (pending before the Legislature as this bill)
46 or initial identification of a business, or country, or country's
47 instrumentality in accordance with this section. Upon
48 identification, and prior to any sale, redemption, divestment, or

1 withdrawal of an investment, the director shall notify the business,
2 or country, or country's instrumentality that it is in violation of this
3 act, P.L. , c. (C.) (pending before the Legislature as this
4 bill), and inform the business of the appeal process.

5 c. Within 180 days after the effective date of this act,
6 P.L. , c. (C.) (pending before the Legislature as this bill),
7 the Director of the Division of Investment shall file with the
8 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
9 19.1), a report of all investments held as of the effective date that
10 are in violation of subsection a. of this section. Every year
11 thereafter, the director shall report on all investments sold,
12 redeemed, divested, or withdrawn in compliance with subsection b.
13 of this section.

14 Each report after the initial report shall provide a description of
15 the progress that the division has made since the previous report
16 and since the enactment of this act, P.L. , c. (C.) (pending
17 before the Legislature as this bill) in implementing subsection b. of
18 this section.

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

28
29 3. This act shall take effect immediately.
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32 STATEMENT

33
34 This bill prohibits the investment of New Jersey public employee
35 retirement funds in any business, country, country's instrumentality,
36 or business affiliate that avoids its Superfund obligations to the
37 State.

38 The bill prohibits the investment of any pension or annuity fund
39 asset under the jurisdiction of the Division of Investment in the
40 Department of the Treasury in any business, country, country's
41 instrumentality, or business affiliate, if that business has been
42 identified as a responsible party by the United States Environmental
43 Protection Agency, in accordance with the federal Comprehensive
44 Environmental Response, Compensation, and Liability Act
45 (CERCLA) for a Superfund site in the State, and if that business,
46 country or country's instrumentality filed for bankruptcy rendering
47 it incapable of complying with its obligations with respect to a
48 Superfund site in the State for which it has been identified as a

1 responsible party. This prohibition applies if the bankruptcy filing
2 is in direct anticipation of or in direct response to a finding of
3 responsibility by the United States Environmental Protection
4 Agency in accordance with CERCLA for a Superfund site in the
5 State.

6 The bill requires that divestment occur within three years of the
7 bill's effective date or within three years of an initial identification
8 of a business, country, or country's instrumentality that it is in
9 violation of the bill. The bill requires the director to notify the
10 business, country, or country's instrumentality that it is in violation
11 of the bill, and to inform the business of the appeal process, prior to
12 taking any action to divest prohibited investments.

13 The bill requires the director to file a report with the Legislature
14 of all investments held in violation of the bill within 180 days of the
15 bill's effective date. Every year thereafter, the director is required
16 to report on all investments divested in accordance with the bill.

17 The bill requires the State to indemnify and hold harmless
18 members and employees of the State Investment Council from all
19 claims, liability, losses, and damages that council members, and
20 State officers and employees, may sustain because of a decision to
21 divest investments prohibited by the bill.