

[First Reprint]

SENATE, No. 1208

STATE OF NEW JERSEY
218th LEGISLATURE

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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 Senate State Government, Wagering, Tourism & Historic Preservation Committee on February 1, 2018, with amendments.

(Sponsorship Updated As Of: 6/26/2018)

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

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:

¹Senate SSG committee amendments adopted February 1, 2018.

1 Superfund obligations for the Diamond Alkali site. Nevertheless,
2 YPF S.A. remains a profitable business.

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

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

13

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

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

40 b. The Director of the Division of Investment, after consulting
41 with an independent research firm, shall take appropriate action to
42 sell, redeem, divest, or withdraw investments held in violation of
43 subsection a. of this section. This section shall not be construed to
44 require the premature or otherwise imprudent sale, redemption,
45 divestment, or withdrawal of an investment, but such sale,
46 redemption, divestment, or withdrawal shall be completed not later
47 than three years following the effective date of this act, P.L. ,

48 c. (C.) (pending before the Legislature as this bill) or initial

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

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

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

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

31

32 3. This act shall take effect immediately.