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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 Assembly Appropriations Committee on December 18, 2017, with amendments.

(Sponsorship Updated As Of: 1/9/2018)
AN ACT concerning the investment by the State of pension and
annuity funds in entities that avoid their Superfund obligations to
the State 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. The Legislature finds and declares that:

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

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

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

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

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

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

Three months following the EPA’s announcement, YPF S.A.
placed Maxus Energy Corporation into bankruptcy, ultimately
stripping it of its assets and rendering it unable to fulfill its
Superfund obligations for the Diamond Alkali site. Nevertheless,
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.
New Jersey has a significant interest in ensuring these Superfund sites no longer pose a threat to its residents, and if responsible parties are able to avoid the expense of a cleanup of Superfund sites without consequence, then the State should not allow those parties to continue to profit from the State’s investments.

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

2. a. Notwithstanding any provision of law to the contrary, no assets of any pension or annuity fund under the jurisdiction of the Division of Investment in the Department of the Treasury, or its successor, shall be invested in any business, or country or its instrumentality, ['or any such entity that has an equity tie with any of the aforesaid] or business affiliate', 'if' that 'business' has been identified as a responsible party, with or without adjudication or other finding of responsibility, by the United States Environmental Protection Agency in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. s.9601 et seq., for a Superfund site in the State, upon that business entity, country or country’s instrumentalities filing for bankruptcy ['or otherwise'] rendering that 'business' [company], or country, or country’s instrumentality incapable of complying with its obligations, in whole or in part, for a Superfund site in the State for which it has been identified as a responsible party, when that bankruptcy filing is in direct anticipation of or in direct response to a finding of responsibility by the United States Environmental Protection Agency in accordance with CERCLA for a Superfund site in the State.

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

b. The [State Investment Council and the] Director of the Division of Investment, after consulting with an independent research firm ['that specializes in global security risk for portfolio determinations selected by the State Treasurer'], shall take appropriate action to sell, redeem, divest, or withdraw ['any investment'] investments held in violation of subsection a. of this section. This section shall not be construed to require the premature or otherwise imprudent sale, redemption, divestment, or withdrawal of an investment, but such sale, redemption, divestment, or withdrawal shall be completed not later than three years following
the effective date of this act, P.L. , c. (C. ) (pending before the Legislature as this bill) or initial identification of a business, or country, or country’s instrumentality in accordance with this section. Upon identification, and prior to any sale, redemption, divestment, or withdrawal of an investment, the director shall notify the business, or country, or country’s instrumentality that it is in violation of this act, P.L. , c. (C. ) (pending before the Legislature as this bill), and inform the business of the appeal process.

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

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

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

3. This act shall take effect immediately.