

**ASSEMBLY, No. 2347**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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INTRODUCED FEBRUARY 3, 2020

**Sponsored by:**  
**Assemblyman PAUL D. MORIARTY**  
**District 4 (Camden and Gloucester)**

**SYNOPSIS**

Prohibits investment by State of pension and annuity funds in hedge funds and derivative contracts.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT prohibiting the investment by the State of pension and  
2 annuity funds in hedge funds and derivative contracts, and  
3 amending and supplementing P.L.1950, c.270.  
4

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

8 1. Section 11 of P.L.1950, c.270 (C.52:18A-89) is amended to  
9 read as follows:

10 11. a. Limitations, conditions and restrictions contained in any  
11 law concerning the kind or nature of investment of any of the  
12 moneys of any of the funds or accounts referred to herein shall  
13 continue in full force and effect; provided, however, that subject to  
14 any acceptance required, or limitation or restriction contained  
15 herein: the Director of the Division of Investment shall at all times  
16 have authority to invest and reinvest any such moneys in  
17 investments as defined in subsection c. of this section and, for or on  
18 behalf of any such fund or account, to sell or exchange any such  
19 investments; provided, however, that the Board of Trustees of the  
20 Police and Firemen's Retirement System of New Jersey shall have  
21 the authority to direct the investment and reinvestment policies for  
22 or on behalf of the Police and Firemen's Retirement System of New  
23 Jersey, with the exception of those monies held by Common  
24 Pension Fund L as of the effective date of this act and thereafter,  
25 which the Board of Trustees of the Police and Firemen's Retirement  
26 System of New Jersey shall have no authority to direct investment  
27 associated with the Common Pension Fund L. The Director of the  
28 Division of Investment shall retain all functions, powers, and duties  
29 pursuant to P.L. 2017, c. 98 (C.5:9-22.5 et seq.).

30 b. In investing and reinvesting any and all money and property  
31 committed to the director's investment discretion from any source  
32 whatsoever, and in acquiring, retaining, selling, exchanging and  
33 managing investments, the Director of the Division of Investment,  
34 and in the case of the Police and Firemen's Retirement System of  
35 New Jersey, the Board of Trustees of the Police and Firemen's  
36 Retirement System of New Jersey, shall exercise the care, skill,  
37 prudence and diligence under the circumstances then prevailing that  
38 a prudent person acting in a like capacity and familiar with such  
39 matters would use in the conduct of an enterprise of a like character  
40 and with like aims. In making each investment, the director may,  
41 depending on the nature and objectives of the portfolio, consider the  
42 whole portfolio, provided that, in making each investment, the  
43 director shall act with the reasonable expectation that the return on  
44 each investment shall be commensurate with the risk associated  
45 with each investment. The director shall be under a duty to manage

**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.

1 and invest the portfolio solely in the interests of the beneficiaries of  
2 the portfolio and for the exclusive purpose of providing financial  
3 benefits to the beneficiaries of the portfolio.

4 c. For the purposes of this section, "investments" means and  
5 includes property of every nature, real, personal and mixed, tangible  
6 and intangible, and specifically includes, solely by way of  
7 description and not by way of limitation, bonds, debentures and  
8 other corporate obligations, direct and indirect investments in  
9 equity real estate, mortgages and other direct or indirect interests in  
10 real estate or investments secured by real estate, capital stocks,  
11 common stocks, preferred stocks, diversified pools of venture  
12 capital which otherwise could be made consistent with the standard  
13 of care required by subsection b. of this section, common trust  
14 funds as defined in and regulated by sections 36 through 46 of  
15 P.L.1948, c.67 (C.17:9A-36 through 17:9A-46), repurchase  
16 agreements, securities loan transactions secured by cash, securities  
17 issued by the United States government or its agencies, or  
18 irrevocable bank letters of credit, whether directly or through a  
19 bank or similar financial institution acting as agent or trustee,  
20 mutual funds, and any other security issued by an investment  
21 company or investment trust, whether managed or not by third  
22 parties, registered under the "Investment Company Act of 1940,"  
23 (15 U.S.C. s.80a-1 et seq.). **[15 U.S.C.s.80a-1 et seq]** Pub.L.76-768  
24 (15 U.S.C.s.80a-1 et seq.). "Investments" does not mean and does  
25 not include derivative contracts and hedge funds as defined under  
26 section 2 of P.L. , c. (C. ) (pending before the Legislature  
27 as this bill). No investment that is otherwise permissible under this  
28 subsection shall be considered to be unlawful solely because the  
29 investment is made indirectly or through a partnership, trust, or  
30 other legal entity.

31 (cf: P.L.2018, c.55, s.37)

32  
33 2. (New section) a. As used in this section:

34 "Absolute return strategy" means an investment strategy with the  
35 goal of achieving consistent positive returns with less correlation to  
36 traditional performance benchmarks than long position only  
37 strategies.

38 "Derivative contract" means a financial contract whose value is  
39 based on the values of an underlying asset, reference rate, or index  
40 of asset values or reference rates that allows one party to transfer  
41 the financial risk of an exposure to another party. "Derivative  
42 contract" means and specifically includes, solely by way of  
43 description and not by way of limitation, financial instruments  
44 known as forwards, futures, options, and swaps.

45 "Hedge fund" means a firm, foreign or domestic, that provides  
46 investment management services to third parties, pursues an  
47 absolute return strategy, may use leverage as part of its investment  
48 strategy, does not offer the placement of investments in the hedge

1 fund to the general public, and charges performance-based fees as  
2 part of its remuneration. “Hedge fund” includes a domestic  
3 “investment company,” as defined in Section 3(a)(1) of the  
4 “Investment Company Act of 1940,” Pub.L.76-768 (15 U.S.C.  
5 s.80a-3), that claims an exemption under Section 3(c)(1) or Section  
6 3(c)(7) of that act and whose offering of securities is deemed to be  
7 transactions not involving any public offering under Section  
8 230.506 of title 17, Code of Federal Regulations and Section (4)(2)  
9 of the “Securities Act of 1933,” Pub.L.73-22 (15 U.S.C.s.77d).

10 “Long position only strategy” means an investment strategy that  
11 relies on the expectation that an asset in which the investor places  
12 moneys will rise in value.

13 b. Notwithstanding any provision of law to the contrary, no  
14 assets of any pension or annuity fund under the jurisdiction of the  
15 Division of Investment in the Department of the Treasury, or its  
16 successor, shall be invested in any derivative contract or hedge  
17 fund.

18 c. The State Investment Council and the Director of the  
19 Division of Investment shall sell, redeem, divest or withdraw any  
20 investment held in violation of subsection b. of this section. This  
21 section shall not be construed to require the premature or otherwise  
22 imprudent sale, redemption, divestment or withdrawal of an  
23 investment, but such sale, redemption, divestment or withdrawal  
24 shall be completed not later than three years following the effective  
25 date of P.L. , c. (C. ) (pending before the Legislature as this  
26 bill).

27 d. Within one year after the effective date of P.L. ,  
28 c. (C. ) (pending before the Legislature as this bill) the  
29 Director of the Division of Investment shall file with the  
30 Legislature, in accordance with section 2 of P.L.1991, c.164  
31 (C.52:14-19.1), a report of all investments held as of the effective  
32 date that are in violation of subsection b. of this section. Every year  
33 thereafter, the director shall report on all investments sold,  
34 redeemed, divested or withdrawn in compliance with subsection c.  
35 of this section.

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

41 e. State Investment Council members and State officers and  
42 employees involved therewith, shall be immune to any legal or  
43 disciplinary action arising from their decision to reduce or eliminate  
44 investments pursuant to this act.

45  
46 3. This act shall take effect immediately.

## STATEMENT

This bill prohibits the State of New Jersey from investing the assets of any pension or annuity fund under the management of the Division of Investment in the Department of the Treasury in hedge funds and derivative contracts. The division has up to three years to complete the divestiture of holdings in prohibited investments that predate the enactment of this legislation.

The 2008 financial meltdown has brought to light the enormous risks that investors take when they dabble in under-regulated hedge funds and derivative contracts. Hedge funds suffered debilitating losses when credit markets dried up. Since the investment strategy of many hedge funds relies on the availability of cheap credit, the credit crunch tore asunder the foundation of many highly leveraged hedge funds. The derivative market fared no better, as derivative contracts turned out to have been largely unsecured. American International Group Inc. (AIG), a major player in the scantily regulated derivatives market, did not even remotely have the financial wherewithal to meet its obligations when the assets underlying its derivative contracts soured. A massive bailout of AIG by the federal government staved off a complete collapse of the derivative market and the global financial system.

Considering the horrid events of the fall of 2008, it has become abundantly clear that the fiduciary responsibility of the State of New Jersey is incompatible with investing pension and annuity funds in exceedingly risky and poorly supervised hedge funds and derivatives.