

3B:20-1

LEGISLATIVE HISTORY CHECKLIST
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(Investments--fiduciaries)

NJSA: 3B:20-1

LAWS OF: 1995 **CHAPTER:** 48

BILL NO: S712

SPONSOR(S): Singer

DATE INTRODUCED: March 3, 1994

COMMITTEE: **ASSEMBLY:** ---

SENATE: State Management

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** February 6, 1994

SENATE: December 15, 1994

DATE OF APPROVAL: March 17, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

P.L.1995, CHAPTER 48, approved March 17, 1995
1994 Senate No. 712 (First Reprint)

1 AN ACT concerning investments by fiduciaries and amending
2 N.J.S.3B:20-1 and N.J.S.3B:20-13.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. N.J.S.3B:20-1 is amended to read as follows:

7 3B:20-1. Definitions. As used in this chapter:

8 a. "Trust instrument" means and includes a will, deed,
9 agreement, court order or other instrument pursuant to which
10 money or other property is entrusted to a fiduciary;

11 b. "Fiduciary" means an individual or corporation that is
12 authorized to act as or acts as a trustee, personal representative,
13 conservator, guardian, and every other person or corporation
14 charged with the duty of administering a trust estate;

15 c. "Trust estate" means money or other property entrusted to
16 a fiduciary pursuant to a trust instrument, will, estate of an
17 intestate decedent or the estate of a minor or mentally
18 incompetent person being administered by a guardian;

19 d. "Investments" means and includes property of every nature,
20 real, personal and mixed, tangible and intangible, (which persons
21 of ordinary prudence and reasonable discretion acquire for the
22 purpose of preserving capital and of realizing income;) and
23 specifically includes, solely by way of description and not by way
24 of limitation, bonds, debentures and other corporate obligations,
25 ¹[real estate, mortgages] direct and indirect investment in equity
26 real estate mortgages and other direct or indirect interests in
27 real estate or investments secured by real estate¹, capital stocks,
28 common stocks, preferred stocks, diversified pools of venture
29 capital ¹which otherwise could be made consistently with the
30 standard of care required by N.J.S.3B:20-13¹, common trust
31 funds as defined in and regulated by article 9, "Common Trust
32 Funds," P.L.1948, c.67 (C.17:9A-36 et seq.), repurchase
33 agreements, ¹securities loan transactions secured by cash,
34 securities issued by the United States government or its agencies,
35 irrevocable bank letters of credit, whether directly or through a
36 bank or similar financial institution acting as agent or trustee, ¹
37 mutual funds, and [securities of any open-end or closed-end
38 management type] any other security issued by an investment
39 company or investment trust, whether managed or not by third
40 parties, registered [pursuant to the Federal Investment Company
41 Act of 1940,] under the "Investment Company Act of 1940,"

EXPLANATION—Matter enclosed in bold-face 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:
¹ Senate SSM committee amendments adopted October 17, 1994.

1 15 U.S.C. §800-1 et seq., as from time to time amended. ¹No
2 investment that is otherwise permissible under this subsection
3 shall be considered to be unlawful solely because the investment
4 is made indirectly through a partnership, trust, or other legal
5 entity.¹

6 (cf: P.L.1983, c.192, s.2)

7 2. N.J.S.3B:20-13 is amended to read as follows:

8 3B:20-13. Standard of care required of fiduciary. In investing
9 and reinvesting money and property of a trust and in acquiring,
10 retaining, selling, exchanging and managing investments, a
11 fiduciary shall exercise [care and judgment under the
12 circumstances then prevailing, which persons of ordinary
13 prudence and reasonable discretion exercise in the management
14 of and dealing with the property and affairs of another,
15 considering the probable income as well as the probable safety of
16 capital] the care, skill, prudence and diligence under the
17 circumstances then prevailing that a prudent person acting in a
18 like capacity and familiar with such matters would use in the
19 conduct of an enterprise of a like character and with like aims.
20 In making each investment, a fiduciary may, depending on the
21 nature and objectives of the portfolio, consider the whole
22 portfolio, provided that, in making each investment, a fiduciary
23 shall act with the reasonable expectation that the return on each
24 investment shall be commensurate with the risk associated with
25 each investment. If the fiduciary has special skills or is named as
26 the fiduciary on the basis of representations of special skills or
27 expertise, he is under a duty to exercise those skills. The
28 fiduciary shall be under a duty to manage and invest the portfolio
29 solely in the interests of the trust beneficiaries and for the
30 exclusive purpose of providing financial benefits to trust
31 participants.

32 (cf: N.J.S.3B:20-13)

33 3. This act shall take effect immediately.

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38 Increases authorized investments and modifies standard of care
39 for fiduciaries.

SENATE, No. 712
STATE OF NEW JERSEY

INTRODUCED MARCH 3, 1994

By Senators SINGER and McGREEVEY

1 AN ACT concerning investments by fiduciaries and amending
2 N.J.S.3B:20-1 and N.J.S.3B:20-13.

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4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. N.J.S.3B:20-1 is amended to read as follows:

7 3B:20-1. Definitions. As used in this chapter:

8 a. "Trust instrument" means and includes a will, deed,
9 agreement, court order or other instrument pursuant to which
10 money or other property is entrusted to a fiduciary;

11 b. "Fiduciary" means an individual or corporation that is
12 authorized to act as or acts as a trustee, personal representative,
13 conservator, guardian, and every other person or corporation
14 charged with the duty of administering a trust estate;

15 c. "Trust estate" means money or other property entrusted to
16 a fiduciary pursuant to a trust instrument, will, estate of an
17 intestate decedent or the estate of a minor or mentally
18 incompetent person being administered by a guardian;

19 d. "Investments" means and includes property of every nature,
20 real, personal and mixed, tangible and intangible, [which persons
21 of ordinary prudence and reasonable discretion acquire for the
22 purpose of preserving capital and of realizing income;] and
23 specifically includes, solely by way of description and not by way
24 of limitation, bonds, debentures and other corporate obligations,
25 real estate, mortgages, capital stocks, common stocks, preferred
26 stocks, diversified pools of venture capital, common trust funds
27 as defined in and regulated by article 9, "Common Trust Funds,"
28 P.L.1948, c.67 (C.17:9A-36 et seq.), repurchase agreements,
29 mutual funds, and [securities of any open-end or closed-end
30 management type] any other security issued by an investment
31 company or investment trust, whether managed or not by third
32 parties, registered [pursuant to the Federal Investment Company
33 Act of 1940,] under the "Investment Company Act of 1940," 15
34 U.S.C. §800-1 et seq., as from time to time amended.

35 (cf: P.L.1983, c.192, s.2)

36 2. N.J.S.3B:20-13 is amended to read as follows:

37 3B:20-13. Standard of care required of fiduciary. In investing
38 and reinvesting money and property of a trust and in acquiring,
39 retaining, selling, exchanging and managing investments, a
40 fiduciary shall exercise [care and judgment under the
41 circumstances then prevailing, which persons of ordinary
42 prudence and reasonable discretion exercise in the management

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 of and dealing with the property and affairs of another,
2 considering the probable income as well as the probable safety of
3 capital] the care, skill, prudence and diligence under the
4 circumstances then prevailing that a prudent person acting in a
5 like capacity and familiar with such matters would use in the
6 conduct of an enterprise of a like character and with like aims.
7 In making each investment, a fiduciary may, depending on the
8 nature and objectives of the portfolio, consider the whole
9 portfolio, provided that, in making each investment, a fiduciary
10 shall act with the reasonable expectation that the return on each
11 investment shall be commensurate with the risk associated with
12 each investment. If the fiduciary has special skills or is named as
13 the fiduciary on the basis of representations of special skills or
14 expertise, he is under a duty to exercise those skills. The
15 fiduciary shall be under a duty to manage and invest the portfolio
16 solely in the interests of the trust beneficiaries and for the
17 exclusive purpose of providing financial benefits to trust
18 participants.

19 (cf: N.J.S.3B:20-13)

20 3. This act shall take effect immediately.

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STATEMENT

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25 The bill would make the following changes in the law governing
26 investments by fiduciaries:

27 1. This bill would expand the list of acceptable investments in
28 which a fiduciary is authorized to invest trust funds to include:
29 mortgages, repurchase agreements, mutual funds, and diversified
30 pools of venture capital and securities or any other security
31 issued by an investment company or investment trust registered
32 under the federal "Investment Company Act of 1940", 15 U.S.C.
33 §800-1 et seq.

34 2. Currently, in managing trust funds a fiduciary is required to
35 exercise:

36 "care and judgment under the circumstances then prevailing,
37 which persons of ordinary prudence and reasonable discretion
38 exercise in the management of and dealing with the property
39 and affairs of another, considering the probable income as
40 well as the probable safety of capital."

41 This bill would substitute language indicating that a fiduciary
42 shall exercise:

43 "the care, skill, prudence and diligence under the
44 circumstances then prevailing that a prudent person acting in
45 like capacity and familiar with such matters would use in the
46 conduct of an enterprise of like character and with like
47 aims."

48 3. The bill would permit a fiduciary to consider the nature and
49 objectives of the whole portfolio in making an investment,
50 provided that there is a reasonable expectation that the return on
51 each investment is commensurate with the risk associated with
52 that investment.

53 4. This bill also provides that a fiduciary has a duty to manage
54 a trust portfolio solely in the interests of the trust beneficiaries

1 and for the exclusive purpose of providing financial benefits to
2 trust participants.

3 Pursuant to P.L.1959, c.17 (C.52:18A-88.1), the Director of the
4 Division of Investment in the Department Treasury is subject to
5 the "Prudent Investment Law," N.J.S.A. 3B:20-12 et seq. Thus,
6 this bill would also change the standard of care governing the
7 investment of State pension funds.

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13 Increases authorized investments and modifies standard of care
for fiduciaries.

SENATE STATE MANAGEMENT, INVESTMENTS
AND FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

SENATE, No. 712

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 17, 1994

The Senate State Management, Investments and Financial Institutions Committee reports favorably and with committee amendments Senate, No. 712.

This bill makes the following changes in the law governing investments by fiduciaries:

1. It expands the list of acceptable investments in which a fiduciary is authorized to invest trust funds to include: direct and indirect investment in equity real estate mortgages and other direct or indirect interests in real estate or investments secured by real estate, diversified pools of venture capital which otherwise could be made consistently with the standard of care required by law, repurchase agreements, securities loan transactions secured by cash, securities issued by the United States government or its agencies, irrevocable bank letters of credit, mutual funds, and any other security issued by an investment company or investment trust, whether managed or not by third parties, registered under the federal "Investment Company Act of 1940", 15 U.S.C. §800-1 et seq. The bill specifies that no permissible investment shall be considered to be unlawful solely because the investment is made indirectly through a partnership, trust or other legal entity.

2. Currently, in managing trust funds a fiduciary is required to exercise:

"care and judgment under the circumstances then prevailing, which persons of ordinary prudence and reasonable discretion exercise in the management of and dealing with the property and affairs of another, considering the probable income as well as the probable safety of capital."

The bill substitutes language stating that a fiduciary shall exercise:

"the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. In making each investment, a fiduciary may, depending on the nature and objectives of the portfolio, consider the whole portfolio, provided that, in making each investment, a fiduciary shall act with the reasonable expectation that the return on each investment shall be commensurate with the risk associated with each investment."

3. The bill provides that a fiduciary has a duty to manage a trust portfolio solely in the interests of the trust beneficiaries and for the exclusive purpose of providing financial benefits to trust participants.

Pursuant to P.L.1959, c.17 (C.52:18A-88.1), the Director of the Division of Investment in the Department Treasury is subject to the "Prudent Investment Law," N.J.S.A.3B:20-12 et seq. Thus, this bill would also change the standard of care governing the investment of State pension funds.

COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) replace the terms "real estate" and "mortgages" with "direct and indirect investment in equity real estate mortgages and other direct or indirect interests in real estate or investments secured by real estate" under the definition of investments;

(2) specify that investments in diversified pools of venture capital be made consistently with the standard of care required by law;

(3) include securities loan transactions secured by cash, securities issued by the United States government or its agencies, and irrevocable bank letters of credit under the definition of investments; and

(4) specify that no permissible investment shall be considered to be unlawful solely because the investment is made indirectly through a partnership, trust or other legal entity.