

LEGISLATIVE HISTORY CHECKLIST
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(Public pension fund assets--
eliminate prohibition on investments)

NJSA: 52:18A-89.1

LAWS OF: 1994 CHAPTER: 19

BILL NO: A857

SPONSOR(S): Brown and others

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: State Government

SENATE: State Management

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: January 27, 1994

SENATE: March 3, 1994

DATE OF APPROVAL: April 12, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

1 AN ACT concerning certain investments in the African
2 Development Bank and amending N.J.S.17B:20-1 and P.L.1947,
3 c.308.

4

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

7 1. N.J.S.17B:20-1 is amended to read as follows:

8 17B:20-1. Any domestic insurer may invest its capital, surplus
9 and other funds, or any part thereof, in:

10 a. ~~Bonds~~, notes, or other evidences of indebtedness or public
11 stock issued, created, insured or guaranteed by the United States,
12 any territory or possession thereof, this or any other state of the
13 United States, the District of Columbia, the Commonwealth of
14 Puerto Rico, Canada, or any of the provinces thereof, or any
15 instrumentality, agency or political subdivision of one or more of
16 the foregoing.

17 b. Real estate which may be improved or which is unimproved
18 but acquired in accordance with a definite plan for development
19 within not more than five years, and in the improvement,
20 development, operation or leasing thereof; provided, that if the
21 commissioner shall determine that the interest of such insurer's
22 policyholders requires that any specific real estate so acquired be
23 disposed of, then such insurer shall dispose of such real estate
24 within such reasonable time as the commissioner shall direct; and
25 provided further, that the sum of (1) the aggregate amount
26 invested in such real estate (including real estate held pursuant to
27 N.J.S.17B:18-45 of this title) and (2) the aggregate amount
28 invested in capital stock of any subsidiary of the insurer pursuant
29 to N.J.S.17B:20-4, engaged in a business primarily involving the
30 owning, improving, developing, operating or leasing of real
31 estate, shall not exceed 10% of the total admitted assets of such
32 insurer as of December 31 next preceding. Real estate used
33 primarily for agricultural, horticultural, ranching, mining,
34 forestry or recreational purposes shall be deemed improved
35 within the meaning of this subsection b. The term "real estate"
36 as used in this chapter shall include any real property and any
37 interest therein, including, without limitation, any interest on,
38 above or below the surface of the land, any leasehold estate
39 therein, and any such interest held or to be held by the insurer in
40 cotenancy with one or more other persons and any partnership
41 interest held by the insurer in any general or limited partnership
42 engaged in a business primarily involving the owning, improving,
43 developing, operating or leasing of real estate. Income produced
44 by investment in any such leasehold shall be applied in a manner
45 calculated to amortize the amount invested in such leasehold

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 within a period not exceeding eight-tenths of the unexpired term
2 of the leasehold, inclusive of enforceable options, or within 40
3 years, whichever is the lesser, or where the peculiar nature of the
4 leasehold involved so dictates, within such period and subject to
5 such other reasonable limitations as the commissioner shall by
6 regulation impose. For the purposes of this subsection b., a
7 mortgage loan shall not be deemed to be an investment in real
8 estate, notwithstanding the mortgagor is an institution in which
9 such insurer has an ownership interest as shareholder, partner, or
10 otherwise. The commissioner may promulgate a regulation in
11 connection with investments under this subsection b. which shall,
12 as far as practicable, be consistent with those regulations of the
13 department which treat with securities supported by such
14 interests in real estate.

15 c. Mortgage loans on unencumbered real estate, located within
16 the United States, any territory or possession thereof, the
17 Commonwealth of Puerto Rico or Canada. The amount of any
18 such loan shall not exceed 80% of the value of the real estate
19 mortgaged unless (1) the loan is also secured by the mortgagor's
20 interest in a lease or leases whose aggregate rentals shall be
21 sufficient, after payment of operating expenses and fixed
22 charges, to repay 90% of the loan with interest thereon during
23 the initial term or terms of such lease or leases and shall be
24 payable directly or indirectly by any governmental units,
25 instrumentalities, agencies or political subdivisions or an
26 institution or institutions which meet the credit standards of the
27 insurer for an unsecured loan to such institution or institutions or
28 (2) the loan is secured by a purchase money mortgage or like
29 security received by the insurer upon the sale or exchange of real
30 estate acquired pursuant to any provision of this title or (3) the
31 excess over such 80% is insured or guaranteed or to be insured or
32 guaranteed by the United States, any territory or possession
33 thereof, this or any other state of the United States, the District
34 of Columbia, the Commonwealth of Puerto Rico, Canada or any
35 of the provinces thereof, or any instrumentality, agency or
36 political subdivision of one or more of the foregoing. Any
37 mortgage loan so insured or guaranteed or to be insured or
38 guaranteed shall not be subject to the provisions of any law of
39 this State prescribing or limiting the interest which may be
40 charged or taken upon any such loan.

41 Any such insurer may hold a participation in any such mortgage
42 loan if (1) such participation is senior and gives the holder
43 substantially the rights of a first mortgagee or (2) the interest of
44 such insurer in the evidence or evidences of indebtedness is of
45 equal priority, to the extent of such interest, with other interests
46 therein.

47 Any such mortgage loan which exceeds two-thirds of the value
48 of the real estate mortgaged shall provide for such payments of
49 principal, whatever the period of the loan, that at no time during
50 the period of the loan shall the aggregate payments of principal
51 theretofore required to be made under the terms of the loan be
52 less than would have been necessary to reduce the loan to
53 two-thirds of such value by the end of 35 years through payments
54 of interest only for five years and equal payments applicable first

1 to interest and then to principal at the end of each year
2 thereafter. The commissioner may promulgate such supplemental
3 regulations as he deems necessary with regard to particular
4 classes of such investments, taking into consideration the type of
5 security and the ratio of the loan to the value of the real estate
6 mortgaged. No loan may be made on leasehold real estate unless
7 the terms of such loan provide for payments to be made by the
8 borrower on the principal thereof in amounts sufficient to
9 completely repay the loan within a period not exceeding
10 nine-tenths of the term of the leasehold, inclusive of the term or
11 terms which may be provided by any enforceable option or
12 options of extension or of renewal, which is unexpired at the time
13 the loan is made.

14 Real estate shall not be deemed to be encumbered within the
15 meaning of this subsection c. by reason of the existence of taxes
16 or assessments that are not delinquent, or encumbrances that do
17 not adversely affect the salability of the property to a material
18 extent or as to which the insurer is insured against loss by title
19 insurance, or any prior mortgage or mortgages held by such
20 insurer if the aggregate of the mortgages held shall not exceed
21 the amount hereinbefore set forth, nor when such real estate is
22 subject to lease in whole or in part; provided, that the security
23 created by the mortgage on such real estate is a first lien
24 thereon. Real estate shall not be deemed to be encumbered and
25 the security of the mortgage thereon shall be deemed a first lien
26 within the meaning of this subsection c., notwithstanding the
27 mortgagor is an institution in which such insurer has an ownership
28 interest as shareholder, partner or otherwise.

29 No such insurer shall, pursuant to this subsection c., invest
30 more than 2% of its total admitted assets as of December 31 next
31 preceding in any mortgage loan secured by any one property, nor
32 shall its total mortgage investments pursuant to this subsection
33 c., exclusive of any mortgage loans secured by a purchase money
34 mortgage or like security received by the insurer upon the sale or
35 exchange of real estate acquired pursuant to any provision of this
36 title or insured or guaranteed or to be insured or guaranteed as
37 hereinbefore provided, exceed 60% of such admitted assets.

38 d. Tangible personal property, equipment trust obligations or
39 other instruments evidencing an ownership interest or other
40 interest in tangible personal property where there is a right to
41 receive determined portions of rental, purchase or other fixed
42 obligatory payments for the use or purchase of such personal
43 property, provided, that the aggregate of such payments, together
44 with the estimated salvage value of such property at the end of
45 its minimum useful life and the estimated tax benefits to the
46 insurer resulting from ownership of such property, is adequate to
47 return the cost of the investment in such property, and provided
48 further, that the aggregate net investments therein shall not
49 exceed 10% of the total admitted assets of such insurer as of
50 December 31 next preceding; or certificates of receivers of any
51 institution where such purchase is necessary to protect an
52 investment in the securities of such institution theretofore made
53 under authority of this chapter; or the capital stock, beneficial
54 shares or other instruments evidencing an ownership interest.

1 bonds, securities or evidences of indebtedness issued, assumed or
2 guaranteed by any institution created or existing under the laws
3 of the United States, any territory or possession thereof, this or
4 any other state of the United States, the District of Columbia,
5 the Commonwealth of Puerto Rico, Canada or any of the
6 provinces thereof; provided, that no purchase of any evidence of
7 indebtedness which is in default as to interest shall be made by
8 such insurer unless such purchase is necessary to protect an
9 investment theretofore made under statutory authority.

10 The term "institution" as used in this chapter shall include any
11 corporation, joint stock association, business trust, business joint
12 venture, business partnership, savings and loan association, credit
13 union or other mutual savings institution. No purchase shall be
14 made of the stock of any class of any corporation, except a
15 subsidiary of the insurer pursuant to N.J.S.17B:20-4, unless (1)
16 such corporation has paid cash dividends on such class of stock
17 during each of the past five years preceding the time of purchase
18 or (2) such corporation shall have earned during the period of such
19 five years an aggregate sum available for dividends upon such
20 stock which would have been sufficient, after all fixed charges
21 and obligations, to pay dividends upon all shares of such class of
22 stock outstanding during such period averaging 4% per annum
23 computed upon the par value (or in the case of stock having no
24 par value, upon the stated capital in respect thereof) of such
25 stock. In the case of the stock of a corporation resulting from or
26 formed by merger, consolidation, acquisition or otherwise less
27 than five years prior to such purchase, each consecutive year
28 next preceding the effective date of such merger, consolidation
29 or acquisition during which dividends or other distributions of
30 profits shall have been paid by any one or more of its constituent
31 or predecessor institutions shall be deemed a year during which
32 dividends have been paid on such class of stock and the earnings
33 of such constituent or predecessor institutions available for
34 dividends during each of such years may be included as earnings
35 of the existing corporation whose stock is to be purchased for
36 each of such years; provided, however, that nothing herein
37 contained shall prohibit the purchase of stock of any class which
38 is preferred, as to dividends, over any class the purchase of which
39 is not prohibited by this section; and provided further, that no
40 purchase of its own stock shall be made by any insurer except for
41 the purpose of the retirement of such stock or except as
42 specifically permitted by any law of this State applicable by its
43 terms only to insurers.

44 e. Securities, properties and other investments in foreign
45 countries, in addition to those specified in N.J.S.17B:20-5, which
46 are substantially of the same character as prescribed for
47 authorized investments for funds of the insurer under the
48 preceding subsections of this section, to an amount valued at
49 cost, not exceeding in the aggregate at any one time 5% of the
50 total admitted assets of such insurer as of December 31 next
51 preceding; provided, however, that the amount invested pursuant
52 to this subsection e. in authorized investments, other than
53 qualified foreign investments, shall not exceed in the aggregate,
54 at any one time, 2% of such admitted assets; and provided further

1 that the amount invested in authorized investments in any one
2 foreign country pursuant to this subsection e. shall not exceed in
3 the aggregate, at any one time, 2% of such admitted assets. For
4 the purposes of this subsection e., Canada shall not be deemed to
5 be a foreign country.

6 The term "qualified foreign investment" as used in this
7 subsection e. shall include any investment in a foreign country
8 where: (1) the issuer or obligor is (a) a jurisdiction which is rated
9 in one of the two highest rating categories by an independent,
10 nationally recognized United States rating agency, (b) any
11 political subdivision or other governmental unit of any such
12 jurisdiction, or any agency or instrumentality of any such
13 jurisdiction, political subdivision or other governmental unit, or
14 (c) an institution which is organized under the laws of any such
15 jurisdiction, or, in the case of investments which are substantially
16 of the same character as prescribed for investments under
17 subsections b. and c. of this section, the real property is located
18 in any such jurisdiction; and (2) if the investment is denominated
19 in any currency other than United States dollars, the investment
20 is effectively hedged, substantially in its entirety, against the
21 United States dollar pursuant to contracts or agreements which
22 are (a) issued by or traded on a securities exchange or board of
23 trade regulated under the laws of the United States or Canada or
24 a province thereof, (b) entered into with a United States banking
25 institution which has assets in excess of \$5,000,000,000 and which
26 has obligations outstanding, or has a parent corporation which has
27 obligations outstanding, which are rated in one of the two highest
28 rating categories by an independent, nationally recognized United
29 States rating agency, or with a broker-dealer registered with the
30 Securities and Exchange Commission which has net capital in
31 excess of \$250,000,000, or (c) entered into with any other banking
32 institution which has assets in excess of \$5,000,000,000 and which
33 has obligations outstanding, or has a parent corporation which has
34 obligations outstanding, which are rated in one of the two highest
35 rating categories by an independent, nationally recognized United
36 States rating agency and which is organized under the laws of a
37 jurisdiction which is rated in one of the two highest rating
38 categories by an independent, nationally recognized United States
39 rating agency.

40 Any investment qualified pursuant to paragraph (2) of the
41 preceding definition of "qualified foreign investment" shall
42 remain so qualified only at such time or times that the hedging
43 requirements of paragraph (2) are met.

44 f. Bonds, notes, or other evidences of indebtedness, issued,
45 insured or guaranteed or to be insured or guaranteed by the
46 International Bank for Reconstruction and Development, or by
47 the International Finance Corporation, or by the Inter-American
48 Development Bank, or by the Asian Development Bank, or by the
49 African Development Bank[, except that no funds invested in
50 obligations issued, insured or guaranteed by the African
51 Development Bank shall be used in or shall go to South Africa].

52 g. Collateral loans secured by a pledge of capital stock,
53 beneficial shares or other instruments evidencing an ownership
54 interest, bonds, securities or evidences of indebtedness qualified

1 or permitted for investment under any of the preceding
2 subsections of this section. The amount of any such loan shall not
3 exceed 80% of the market value of the security pledged at the
4 date of the loan.

5 h. Loans or investments which are not qualified or permitted
6 under any of the preceding subsections of this section or which
7 are not otherwise expressly authorized by law; provided, that the
8 aggregate amount of such loans and investments, valued at cost,
9 shall not exceed at any one time 7% of the total admitted assets
10 of such insurer as of December 31 next preceding.

11 For the purposes of subsection c. and this subsection h., the
12 portion of a mortgage loan on unencumbered real estate which
13 does not exceed 80% of the value of the real estate mortgaged
14 shall be deemed to be a permitted investment under subsection c.
15 and the remainder of said loan may be deemed to be made under
16 this subsection h. Any investment originally made under this
17 subsection h. which would subsequently, if it were being made,
18 qualify as a permitted investment under another subsection of
19 this section shall thenceforth be deemed to be a permitted
20 investment under such other subsection.

21 (cf: P.L.1993,c.253,s.2.)

22 2. Section 1 of P.L.1947, c.308 (C.17:2-9.3) is amended to read
23 as follows:

24 1. The following may, in addition to other investments allowed
25 by law, properly and legally invest any funds, including capital,
26 belonging to them or within their control in obligations issued or
27 guaranteed by the International Bank for Reconstruction and
28 Development, or the International Finance Corporation, or by the
29 Inter-American Development Bank or the Asian Development
30 Bank or the African Development Bank; that is to say:

31 (a) Insurance companies, insurance associations, and all other
32 persons carrying on an insurance business.

33 (b) Executors, administrators, guardians, committees,
34 conservators, liquidators, rehabilitators, receivers, trustees, and
35 all other persons occupying similar fiduciary positions.

36 (c) Banks, trust companies, bankers and savings banks.

37 (d) Savings and loan, and building and loan associations,
38 investment companies, and other financial institutions.

39 (e) Credit unions, cemetery associations, mutual benevolent
40 and benefit associations.

41 (f) Firemen's, police, and teachers' association pension and
42 relief funds.

43 (g) Other pension, retirement, compensation, and sinking fund
44 systems.

45 (h) The State and its counties, and municipalities and their
46 subdivisions and agencies.

47 (i) All public officers, officials, boards, commissions, bodies
48 and agencies of the State and its counties, and municipalities and
49 their subdivisions and agencies.

50 (j) Any other individual, firm, group, corporation, association,
51 institution, and fund of any nature whatsoever.

52 [In the case of investments in obligations issued or guaranteed
53 by the African Development Bank, no funds shall be used in or
54 shall go to South Africa.]

55 (cf: P.L.1993, c.253,s.1)

1 3. This act shall take effect immediately.
2

3
4 STATEMENT
5

6 This bill eliminates the prohibition on investments in
7 obligations issued, insured or guaranteed by the African
8 Development Bank being used in or going to the Republic of South
9 Africa.

10 This bill reflects the changing political situation brought about
11 by the movement to end apartheid in the Republic of South
12 Africa and is in accordance with the worldwide movement to lift
13 sanctions.
14

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16

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18 Eliminates prohibition on investment of funds being used in or
19 going to the Republic of South Africa.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 857

STATE OF NEW JERSEY

DATED: JANUARY 24, 1994

The Assembly State Government Committee reports favorably Assembly Bill No. 857.

This bill amends two statutes governing the kinds of investments which may be made by various banking and insurance institutions and other fiduciaries, including (1) life and health insurers formed under New Jersey law (N.J.S.A.17B:20-1), and (2) other insurers; banks, trust companies, bankers and savings banks; savings and loan and building and loan associations, investment companies, and other financial institutions; executors, administrators, guardians, committees, conservators, liquidators, rehabilitators, receivers, trustees, and all other persons occupying similar fiduciary positions; and the State and its counties, and municipalities and their subdivisions and agencies (N.J.S.A.17:2-9.3).

Under a law enacted in 1985 (P.L.1985, c.309), these fiduciary entities were explicitly authorized to invest their own funds or funds under their management in obligations issued or guaranteed by the African Development Bank, subject to the restriction that no funds so invested should be used in or go to South Africa. This bill would remove that restriction.

**SENATE STATE MANAGEMENT, INVESTMENTS
AND FINANCIAL INSTITUTIONS COMMITTEE**

STATEMENT TO

ASSEMBLY, No. 857

STATE OF NEW JERSEY

DATED: FEBRUARY 24, 1994

The Senate State Management, Investments and Financial Institutions Committee reports favorable Assembly Bill No. 857.

This bill removes the prohibition on investments in obligations issued, insured or guaranteed by the African Development Bank being used in or going to the Republic of South Africa. This prohibition is no longer necessary because of the ending of apartheid in that country and eliminating it is in accordance with the worldwide movement to lift sanctions against the Republic of South Africa.