

3B:20-11.1 to 3B:20-11.12

**LEGISLATIVE HISTORY CHECKLIST**  
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(Prudent investing)

NJSA: 3B:20-11.1 to 3B:20-11.12

LAWS OF: 1997 CHAPTER: 26

BILL NO: S1092

SPONSOR(S): Inverso

DATE INTRODUCED: May 9, 1996

COMMITTEE: ASSEMBLY: --

SENATE: State Management

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First reprint enacted superscript numbers

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**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

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Article 1A (New)  
Prudent  
Investor Act.  
§§1-12  
C.3B:20-11.1 to  
3B:20-11.12  
§27 - Repealer  
§28- Note to §§1-27

P.L. 1997, CHAPTER 26, *approved March 7, 1997*  
Senate, No. 1092 (*First Reprint*)

1 **AN ACT** concerning the standards for prudent investing by fiduciaries  
2 of certain trust estates and of certain funds by the Director of the  
3 Division of Investment and revising parts of the statutory law.

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

7  
8 1. (New section) Sections 1 through 12 of this 1996 amendatory  
9 and supplementary act shall be known and may be cited as the  
10 "Prudent Investor Act."

11  
12 2. (New section) a. Except as provided in subsection b. of this  
13 section, a fiduciary who invests and manages trust assets owes a duty  
14 to the beneficiaries of the trust to comply with the prudent investor  
15 rule, as set forth in this act.

16 b. The prudent investor rule is a default rule that may be expanded,  
17 restricted, eliminated, or otherwise altered by express provisions of the  
18 trust instrument. A fiduciary is not liable to a beneficiary to the extent  
19 that the fiduciary acted in reasonable reliance on those express  
20 provisions. Nothing herein shall affect the jurisdiction of the Superior  
21 Court to order or authorize a fiduciary to deviate from the express  
22 terms or provisions of a trust instrument for the causes, in the manner,  
23 and to the extent otherwise provided by law.

24  
25 3. (New section) a. A fiduciary shall invest and manage trust  
26 assets as a prudent investor would, by considering the purposes, terms,  
27 distribution requirements, and other circumstances of the trust. In  
28 satisfying this standard, the fiduciary shall exercise reasonable care,  
29 skill, and caution.

30 b. A fiduciary's investment and management decisions respecting  
31 individual assets shall not be evaluated in isolation, but in the context

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Senate SSM committee amendments adopted June 6, 1996.**

1 of the trust portfolio as a whole and as a part of an overall investment  
2 strategy having risk and return objectives reasonably suited to the  
3 trust.

4 c. Subject to the standards established in this act, a fiduciary may  
5 invest in any kind of property or type of investment. No specific  
6 investment or course of action is inherently imprudent.

7 d. Among the circumstances that the fiduciary shall consider in  
8 investing and managing trust assets are those of the following as are  
9 relevant to the trust and its beneficiaries:

10 (1) general economic conditions;

11 (2) the possible effect of inflation or deflation;

12 (3) the expected tax consequences of investment decisions or  
13 strategies;

14 (4) the role that each investment or course of action plays  
15 within the overall trust portfolio;

16 (5) the expected total return from income and the appreciation  
17 of capital;

18 (6) other resources of the beneficiaries;

19 (7) the need for liquidity, for regularity of income, and for  
20 preservation or appreciation of capital; and

21 (8) an asset's special relationship or special value, if any, to the  
22 purposes of the trust or to one or more of the beneficiaries as, for  
23 example, an interest in a closely-held enterprise, tangible and  
24 intangible personalty, or real estate.

25 e. The fiduciary shall take reasonable steps to verify facts relevant  
26 to the investment and management of trust assets and may rely and be  
27 fully protected in relying upon statistical, financial, corporate or other  
28 information as to a particular investment, and upon ratings or other  
29 opinion as to the financial or other status thereof, contained in or  
30 offered by any financial, statistical, investment, rating or other  
31 publication or service published for the use of and accepted as reliable  
32 by investors in like investments or upon a copy of the prospectus  
33 prepared and filed with the Securities and Exchange Commission in  
34 connection with a new issue.

35 f. A fiduciary who has special skills or expertise, or is named  
36 fiduciary in reliance upon representations of special skills or expertise,  
37 has a duty to use those special skills or expertise.

38

39 4. (New section) A fiduciary shall diversify the investments of the  
40 trust unless the fiduciary reasonably determines that, because of  
41 special circumstances, the purposes of the trust are better served  
42 without diversifying.

43

44 5. (New section) A fiduciary shall invest and manage the trust  
45 assets solely in the interest of the beneficiaries.

1       6. (New section) If a trust has two or more beneficiaries, the  
2 fiduciary shall act impartially in investing and managing the trust  
3 assets, taking into account any differing interests of the beneficiaries.  
4

5       7. (New section) Within <sup>1</sup>[a reasonable time] six months<sup>1</sup> after  
6 accepting trust assets, the fiduciary shall review the trust assets and  
7 shall make and implement decisions concerning the retention and  
8 disposition of assets received at the inception of the trust, in order to  
9 bring the trust portfolio into compliance with the provisions of the  
10 trust instrument or with the requirements of this act.  
11

12       8. (New section) In investing and managing trust assets, a  
13 fiduciary may only incur costs that are appropriate and reasonable in  
14 relation to the assets, the purposes of the trust, and the skills of the  
15 fiduciary. A fiduciary who delegates investment and management  
16 functions pursuant to section 10 of P.L.     , c.     (C.     )(pending  
17 before the Legislature as this bill) shall control the overall costs of the  
18 delegation, including making a reduction in the amount of corpus  
19 commissions otherwise allowable to the fiduciary with respect to the  
20 trust assets for which investment responsibility has been delegated,  
21 which reduction shall take account of the duties and responsibilities  
22 retained by the fiduciary with respect to such assets.  
23

24       9. (New section) The prudent investor rule expresses a standard  
25 of conduct, not outcome. Compliance with the rule is determined in  
26 light of the facts and circumstances existing at the time of the  
27 fiduciary's decision or action.  
28

29       10. (New section) a. A fiduciary may delegate investment and  
30 management functions that a prudent fiduciary of comparable skills  
31 could properly delegate under the circumstances. The fiduciary shall  
32 exercise reasonable care, skill, and caution in:

33       (1) selecting an agent with special investment skills and expertise  
34 and of sound financial standing;

35       (2) establishing the scope and terms of the delegation consistent  
36 with the purpose and terms of the trust instrument; and

37       (3) periodically reviewing the agent's actions in order to monitor  
38 the agent's performance and compliance with the scope and terms of  
39 the delegation.

40       b. In performing a delegated function, the agent shall owe to the  
41 trustee and the beneficiaries the same duties as the fiduciary and shall  
42 be held to the same standards as the fiduciary.

43       c. The fiduciary who complies with the requirements of subsection  
44 a. of this section shall not be liable to the beneficiaries or to the trust  
45 for the decisions or actions of the agent to whom the function was  
46 delegated.

1 d. By accepting the delegation of a trust function from the  
2 fiduciary of a trust that is subject to the law of New Jersey, the agent  
3 submits to the jurisdiction of the courts of New Jersey, even if the  
4 delegation agreement provides otherwise.

5 e. If there are two or more fiduciaries serving, only one of whom  
6 has special investment and management skills or expertise or has been  
7 named in reliance upon representations of such special skills or  
8 expertise, then the fiduciary or fiduciaries not possessed of such  
9 special skills or expertise may, pursuant to this section, delegate  
10 investment and management functions to the other fiduciary as if such  
11 other fiduciary were an agent selected in accordance with this section  
12 and subject to the provisions of this section.

13 f. A fiduciary shall provide reasonable advance written notice on  
14 each occasion upon which the fiduciary intends to delegate investment  
15 and management functions pursuant to this section, including the  
16 identity of the agent, to the beneficiary or beneficiaries eligible to  
17 receive income from the trust on the date of the intended delegation.  
18 Upon providing such notice, the fiduciary shall be authorized to  
19 delegate investment and management functions pursuant to this  
20 section.

21  
22 11. (New section) The following terms or comparable language in  
23 a trust instrument, unless otherwise limited or modified by that  
24 instrument, shall be construed as authorizing any investment or  
25 strategy permitted under this act: "investments permissible by law for  
26 investment of trust funds," "legal investment," "authorized  
27 investments," "using the judgement and care under the circumstances  
28 then prevailing that persons of prudence, discretion, and intelligence  
29 exercise in the management of their own affairs, not in regard to  
30 speculation but in regard to the permanent disposition of their funds,  
31 considering the probable income as well as the probable safety of their  
32 capital," "prudent man rule," "prudent trustee rule," "prudent person  
33 rule," and "prudent investor rule."

34  
35 12. (New section) This act shall apply to and govern trusts  
36 existing on and created after its effective date. As applied to trusts  
37 existing on its effective date, this act governs only actions or omissions  
38 occurring after that date.

39  
40 13. N.J.S.3B:20-1 is amended to read as follows:

41 3B:20-1. Definitions. As used in this chapter:

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

45 b. "Fiduciary" means an individual or corporation that is authorized  
46 to act as or acts as a trustee, personal representative, conservator,

1 guardian, and every other [person] individual or corporation charged  
2 with the duty of administering a trust estate;

3 c. "Trust estate" or "trust assets" means money or other property  
4 entrusted to a fiduciary [pursuant to a trust instrument, will, estate of  
5 an intestate decedent or the estate of a minor or mentally incompetent  
6 person being administered by a guardian];

7 d. ["Investments" means and includes property of every nature,  
8 real, personal and mixed, tangible and intangible, and specifically  
9 includes, solely by way of description and not by way of limitation,  
10 bonds, debentures and other corporate obligations, direct and indirect  
11 investment in equity real estate mortgages and other direct or indirect  
12 interests in real estate or investments secured by real estate, capital  
13 stocks, common stocks, preferred stocks, diversified pools of venture  
14 capital which otherwise could be made consistently with the standard  
15 of care required by N.J.S.3B:20-13, common trust funds as defined in  
16 and regulated by article 9, "Common Trust Funds," P.L.1948, c.67  
17 (C.17:9A-36 et seq.), repurchase agreements, securities loan  
18 transactions secured by cash, securities issued by the United States  
19 government or its agencies, irrevocable bank letters of credit, whether  
20 directly or through a bank or similar financial institution acting as  
21 agent or trustee, mutual funds, and any other security issued by an  
22 investment company or investment trust, whether managed or not by  
23 third parties, registered under the "Investment Company Act of 1940,"  
24 15 U.S.C. {800-1 et seq., as from time to time amended. No  
25 investment that is otherwise permissible under this subsection shall be  
26 considered to be unlawful solely because the investment is made  
27 indirectly through a partnership, trust, or other legal entity.](Deleted  
28 by amendment, P.L. , c. .)

29 e. "Beneficiary" means an individual or corporation for whose  
30 benefit a fiduciary acts or is authorized to act.

31 (cf: P.L.1995, c.48, s.1.)

32

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

34 3B:20-7. Directions of court concerning the sale, conversion or  
35 retention of investments. When securities or other property come into  
36 possession of a fiduciary as part of the assets of the trust estate [he]  
37 the fiduciary is to administer or manage, the fiduciary may apply to the  
38 court for direction as to the sale, conversion or retention of the  
39 securities or property.

40 The court shall make an order as it shall deem most advantageous  
41 to the trust estate[, or the trust fund] and the interests of persons  
42 entitled to share therein.

43 (cf: N.J.S.3B:20-7)

44

45 15. N.J.S.3B:20-8 is amended to read as follows:

46 3B:20-8. Protection afforded fiduciary continuing investments

1 under court order. A fiduciary [continuing to hold securities or other  
2 property as investments in accordance with an order of court pursuant  
3 to N.J.S.3B:20-7] shall not be held accountable for any loss by reason  
4 of continuing to hold the [securities or other property] trust assets in  
5 accordance with an order pursuant to N.J.S.3B:20-7.

6 (cf: N.J.S.3B:20-8)

7

8 16. N.J.S.3B:20-9 is amended to read as follows:

9 3B:20-9. Application to court upon change in conditions. If, as a  
10 result of a change in conditions which occurs or which may be  
11 reasonably foreseen, the objects of [a] the trust [created by a will,  
12 other instrument or order of court] estate may be defeated in whole or  
13 in part by the investment or retention of investments of the trust estate  
14 in [securities or other] property to which the fiduciary is limited by the  
15 [will, other] trust instrument [or court order creating the trust], the  
16 fiduciary or any beneficiary of the trust may apply to the court to  
17 secure authority permitting or directing the fiduciary to invest all or  
18 any part of the trust estate in [other investments] accordance with the  
19 provisions of N.J.S.3B:20-1 et seq.

20 (cf: N.J.S.3B:20-9)

21

22 17. N.J.S.3B:20-10 is amended to read as follows:

23 3B:20-10. Investments by court order upon change in conditions.  
24 If the court finds that by reason of a change in conditions which has  
25 occurred since the creation of the trust or which may be reasonably  
26 foreseen, the objects of the trust estate may be defeated in whole or in  
27 part by the investment or retention of the trust estate in [securities or  
28 other] property to which the fiduciary is limited by the trust instrument  
29 [or court order creating the trust estate] and that the objects of the  
30 trust estate and those interested in it would be promoted by the  
31 investment of all or part of the trust estate otherwise, the court shall  
32 authorize or direct the fiduciary to invest the whole of the trust estate  
33 or that part of it as shall be designated, in [any securities or other  
34 property which in its judgment will promote the objects of the trust  
35 and those interested in it] accordance with the provisions of  
36 N.J.S.3B:20-1 et seq.

37 (cf: N.J.S.3B:20-10)

38

39 18. N.J.S.3B:20-18 is amended to read as follows:

40 3B:20-18. Authority to exchange or convert securities. Except as  
41 otherwise provided in [a will, deed of trust, other] the trust instrument  
42 [or court order], a fiduciary who holds securities in a trust estate  
43 issued by a corporation which has been recapitalized or reorganized,  
44 or which has been a party to a merger or consolidation, may exchange  
45 or convert the securities so held for or into other securities issued by  
46 the corporation as an incident of its recapitalization, reorganization,

1 merger or consolidation, or issued by the corporation's successor  
2 corporation as an incident of the merger or consolidation.

3 (cf: N.J.S.3B:20-18)

4

5 19. N.J.S.3B:20-19 is amended to read as follows:

6 3B:20-19. Fiduciary as issuing corporation. An exchange or  
7 conversion of securities may be made pursuant to this article  
8 notwithstanding that the fiduciary which holds the securities in a trust  
9 estate is the same corporation which issued the securities.

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

11

12 20. N.J.S.3B:20-23 is amended to read as follows:

13 3B:20-23. Banking institution acting as fiduciary. An exchange or  
14 conversion of shares may be made pursuant to this article  
15 notwithstanding that the fiduciary which holds the shares in the trust  
16 estate is the banking institution which issued them.

17 (cf: N.J.S.3B:20-23)

18

19 21. N.J.S.3B:20-25 is amended to read as follows:

20 3B:20-25. Application of article. This article shall not apply where  
21 a [will, deed of trust or other] trust instrument contains provisions  
22 inconsistent with or contrary to the provisions of this article.

23 (cf: N.J.S.3B:20-25)

24

25 22. N.J.S.3B:20-27 is amended to read as follows:

26 3B:20-27. Definitions. As used in this article:

27 a. ["Fiduciary" includes an individual or corporation authorized to  
28 act as a custodian under the "New Jersey Uniform Gifts to Minors  
29 Act," P.L.1963, c.177 (C.46:38-13 et seq.);](~~Deleted by amendment,~~  
30 P.L. , c. )

31 b. "Securities" means instruments which are commonly dealt with  
32 on securities exchanges or markets or commonly recognized in any  
33 area in which they are issued or dealt with as a medium for investment,  
34 and which are subject to the provisions of chapter 8, "Uniform  
35 Commercial Code-Investment Securities" (chapter 8, Title 12A of the  
36 New Jersey Statutes);

37 c. "Clearing corporation" means a corporation as defined in  
38 N.J.S.12A:8-102.

39 (cf: N.J.S.3B:20-27)

40

41 23. N.J.S.3B:20-34 is amended to read as follows:

42 3B:20-34. Application of article. This article shall apply to any  
43 fiduciary holding securities in its fiduciary capacity, and to any banking  
44 institution holding securities as a custodian, managing agent or  
45 custodian for a fiduciary, acting on January 2, 1974, or who thereafter  
46 may act regardless of the date of the [agreement,] trust instrument [or



1 court order] by which the fiduciary is appointed and regardless of  
2 whether or not the fiduciary[,]or the banking institution acting as  
3 custodian, managing agent or custodian for a fiduciary owns capital  
4 stock of the clearing corporation.

5 (cf: N.J.S.3B:20-34)

6

7 24. Section 38 of P.L.1948, c.67 (C.17:9A-38) is amended to read  
8 as follows:

9 38. Effect of trust instruments.

10 A. Except as otherwise provided by subsection B of this section,  
11 where the trust instrument defines, limits, or specifies the investments  
12 which may be made of a trust estate, any common trust fund in which  
13 all or any part of such trust estate is invested shall consist only of the  
14 investments defined, limited, or specified in such trust instrument.

15 B. Where the trust instrument makes no provision governing the  
16 investments which may be made of a trust estate, or where the trust  
17 instrument directs that an estate be invested in "legal investments" or  
18 in "investments in which a fiduciary may by law invest" or in "legal  
19 investments for trustees," or uses words of similar import, investment  
20 of such trust estate may be made, in whole or in part, in a common  
21 trust fund, consisting of property [of every nature, real, personal, and  
22 mixed, tangible and intangible, and further including, solely by way of  
23 description and not by way of limitation, bonds, debentures, and other  
24 corporate obligations, capital stocks, common stocks, preferred  
25 stocks, investments as authorized by article 1 of chapter 15 of Title 3A  
26 of the New Jersey Statutes, and shares of any open-end or closed-end  
27 management type investment company or investment trust registered  
28 pursuant to the Federal Investment Company Act of 1940, as from  
29 time to time amended] in which fiduciaries of trust estates in this State  
30 may invest pursuant to chapter 20 of Title 3B of the New Jersey  
31 Statutes.

32 C. (Deleted by amendment.)

33 D. In making investments as provided in this section a bank shall  
34 exercise [care and judgment under the circumstances then prevailing,  
35 which persons of ordinary prudence and reasonable discretion exercise  
36 in the management of and dealing with the property and affairs of  
37 another, considering the probable income as well as the probable  
38 safety of capital, and, if the bank has special skills or is named as the  
39 fiduciary on the basis of representations of special skills or expertise,  
40 it is under a duty to exercise those skills] the standard of care required  
41 of a fiduciary of trust assets in New Jersey pursuant to chapter 20 of  
42 Title 3B of the New Jersey Statutes.

43 (cf: P.L.1975, c.338, s.2)

1       25. Section 1 of P.L.1959, c.17 (C.52:18A-88.1) is amended to  
2 read as follows:

3       1. The Director of the Division of Investment, in addition to other  
4 investments, presently or from time to time hereafter authorized by  
5 law, shall have authority to invest and reinvest the moneys in, and to  
6 acquire for or on behalf of the funds of the following enumerated  
7 agencies:

8       The Consolidated Police and Firemen's Pension Fund Commission;

9       The Police and Firemen's Retirement System of New Jersey;

10       The Prison Officers' Pension [Fund] Commission;

11       The Public Employees' Retirement System of New Jersey;

12       The State Police Retirement System;

13       The Teachers' Pension and Annuity Fund;

14       <sup>1</sup>[The 1837 Surplus Revenue Fund; and] The Judicial Retirement  
15 System of New Jersey;<sup>1</sup>

16       The Trustees for the Support of Public Schools;

17       <sup>1</sup>and all other funds in the custody of the State Treasurer, unless  
18 otherwise provided by law;<sup>1</sup>

19       such investments which shall be authorized or approved for  
20 investment by regulation of the State Investment Council [and in  
21 which fiduciaries of trust estates in this State may legally invest and  
22 subject to the limitations and conditions applicable thereto].

23 (cf: P.L.1972, c.176, s.1)

24

25       26. Section 11 of P.L.1950, c.20 (C.52:18A-89) is amended to  
26 read as follows:

27       11. a. Limitations, conditions and restrictions contained in any law  
28 concerning the kind or nature of investment of any of the moneys of  
29 any of the funds or accounts referred to herein shall continue in full  
30 force and effect; provided, however, that subject to any acceptance  
31 required, or limitation or restriction contained herein: the Director of  
32 the Division of Investment shall at all times have authority to invest  
33 and reinvest any such moneys in <sup>1</sup>[, and to acquire for or on behalf of  
34 any such funds or accounts, bonds, and other evidences of  
35 indebtedness of the United States of America, and such bonds, and  
36 other evidences of indebtedness, which may be authorized or approved  
37 for investment by regulation of the State Investment Council, in which  
38 (1) savings banks in this State may legally invest; or (2) which are  
39 evidences of indebtedness issued by a company incorporated within  
40 and transacting business within the United States, which are not in  
41 default as to either principal or interest when acquired, and which  
42 have a maturity of not more than twelve months from the date of  
43 purchase; or (3) which are the direct obligations of or unconditionally  
44 guaranteed as to principal and interest by the government of Canada,  
45 payable as to both principal and interest in United States dollars, or  
46 which are the direct obligations of or unconditionally guaranteed as to

1 principal and interest by any of the provinces thereof, payable as to  
2 both principal and interest in United States dollars;] investments as  
3 defined in subsection c. of this section<sup>1</sup> and, for or on behalf of any  
4 such fund or account, to sell or exchange any such<sup>1</sup> investments <sup>1</sup>[or  
5 securities thereof]<sup>1</sup>.

6 b. In investing and reinvesting any and all money and property  
7 committed to the director's investment discretion from any source  
8 whatever, and in acquiring, retaining, selling, exchanging and  
9 managing investments, the Director of the Division of Investment shall  
10 exercise the care, skill, prudence and diligence under the circumstances  
11 then prevailing that a prudent person acting in a like capacity and  
12 familiar with such matters would use in the conduct of an enterprise  
13 of a like character and with like aims. In making each investment, the  
14 director may, depending on the nature and objectives of the portfolio,  
15 consider the whole portfolio, provided that, in making each  
16 investment, the director shall act with the reasonable expectation that  
17 the return on each investment shall be commensurate with the risk  
18 associated with each investment. The director shall be under a duty to  
19 manage and invest the portfolio solely in the interests of the  
20 beneficiaries of the portfolio and for the exclusive purpose of  
21 providing financial benefits to the beneficiaries of the portfolio.

22 c. For the purposes of this section, "investments" means and  
23 includes property of every nature, real, personal and mixed, tangible  
24 and intangible, and specifically includes, solely by way of description  
25 and not by way of limitation, bonds, debentures and other corporate  
26 obligations, direct and indirect investments in equity real estate <sup>1</sup>,<sup>1</sup>  
27 mortgages and other direct or indirect interests in real estate or  
28 investments secured by real estate, capital stocks, common stocks,  
29 preferred stocks, diversified pools of venture capital which otherwise  
30 could be made consistent with the standard of care required by  
31 subsection b. of this section, common trust funds as defined in and  
32 regulated by sections 36 through 46 of P.L.1948, c.67 (C.17:9A-36  
33 through 17:9A-46), repurchase agreements, securities loan  
34 transactions secured by cash, securities issued by the United States  
35 government or its agencies, or irrevocable bank letters of credit,  
36 whether directly or through a bank or similar financial institution  
37 acting as agent or trustee, mutual funds, and any other security issued  
38 by an investment company or investment trust, whether managed or  
39 not by third parties, registered under the "Investment Company Act of  
40 1940," 15 U.S.C. §80a-1 et seq. No investment that is otherwise  
41 permissible under this subsection shall be considered to be unlawful  
42 solely because the investment is made indirectly or through a  
43 partnership, trust, or other legal entity.

44 (cf: P.L.1952, c.8)

1       27. The following are repealed:  
2           N.J.S.3B:20-2;  
3           N.J.S.3B:20-6;  
4           N.J.S.3B:20-11 through N.J.S.3B:20-17 inclusive;  
5           N.J.S.3B:20-20; and  
6           N.J.S.3B:20-24.

7

8       28. This act shall take effect 90 days after enactment.

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12

13       Concerns the investment and management of certain trust estates by  
14       fiduciaries and of certain funds by the Director of the Division of  
15       Investment.

1       28. This act shall take effect 90 days after enactment.

2

3

4

#### STATEMENT

5

6       This bill repeals existing law, N.J.S.3B:20-12 through 17,  
7 commonly known as the "prudent man rule" and, in its place,  
8 establishes a new prudent investor rule for fiduciaries in New Jersey.  
9 The bill incorporates many of the provisions of the Uniform Prudent  
10 Investor Act recently adopted by the National Conference of  
11 Commissioners on Uniform State Laws which, in turn, drew upon the  
12 revised standards for prudent trust investment stated in the  
13 Restatement (Third) of Trusts: Prudent Investor Rule (1992).

14       Fiduciaries must follow the investment standard set forth in their  
15 governing instrument, such as a will, deed, agreement or court order  
16 pursuant to which money or other property is entrusted to a fiduciary.  
17 If no standards are specified, the bill requires that the fiduciary comply  
18 with the new prudent investor rule. The bill's definition of "fiduciary"  
19 includes executors, trustees, guardians, conservators and "every other  
20 individual or corporation charged with the duty of administering a  
21 trust estate."

22       The bill changes substantially the criteria for prudent investing by  
23 fiduciaries. The bill requires a fiduciary to invest trust assets as a  
24 prudent investor would, by considering the purposes, terms,  
25 distribution requirements, and other circumstances of the trust,  
26 requires the fiduciary to exercise reasonable care, skill and caution and  
27 imposes upon the fiduciary the duties of loyalty and impartiality  
28 toward beneficiaries. The bill incorporates the "modern portfolio  
29 theory," by requiring a fiduciary to apply the prudent investor rule to  
30 the trust portfolio as a whole rather than to each individual trust  
31 investment. A fiduciary may invest in any kind of property or type of  
32 investment; no specific investment or course of action is per se  
33 imprudent, so long as each investment or course of action is consistent  
34 with an overall investment strategy having risk and return objectives  
35 reasonably suited to the trust estate. Specific circumstances that a  
36 fiduciary should consider are set forth in the bill, but the list is not  
37 intended to be exclusive. Investments that could be made by  
38 fiduciaries under the bill include, but are not limited to, real estate,  
39 mortgages, repurchase agreements, mutual funds, and diversified pools  
40 of venture capital.

41       The bill requires a fiduciary to diversify the investments of the trust  
42 unless it is reasonably determined that, because of special  
43 circumstances, the purposes of the trust are better served without  
44 diversification.

45       The new prudent investor rule imposes a standard of conduct, not  
46 of performance or outcome. Compliance by a fiduciary is determined

1 in light of the facts and circumstances existing at the time of the  
2 fiduciary's decision or action.

3 The second major revision to current law made by the bill concerns  
4 delegation of investment responsibility. The bill allows a fiduciary to  
5 delegate investment and management functions that a prudent fiduciary  
6 of comparable skills could properly delegate under the circumstances.

7 A fiduciary that exercises reasonable care, skill and caution in  
8 selecting an investment agent, establishing the scope and terms of the  
9 delegated function, and periodically monitoring the agent's  
10 performance and compliance with the scope and terms of the  
11 delegation shall not be liable to the beneficiaries or to the trust for the  
12 agent's decisions or actions. The agent to whom a fiduciary has  
13 delegated investment responsibility owes to the trustee and to the  
14 beneficiaries the same duties as the fiduciary and shall be held to the  
15 same standards as the fiduciary. The bill makes the agent subject to  
16 the jurisdiction of the courts of New Jersey, even if the agent  
17 delegation agreement provides otherwise. The bill requires the  
18 fiduciary to give the income beneficiaries advance notice of any  
19 intended delegation.

20 In investing and managing trust assets, the bill requires that a  
21 fiduciary incur only those costs that are appropriate and reasonable in  
22 relation to the assets, the trust purposes and the skills of the fiduciary.  
23 To protect the beneficiaries, where the fiduciary has delegated  
24 investment responsibility the bill requires a reduction in the fiduciary's  
25 compensation to reflect the fiduciary's lessened responsibilities.

26 The bill also amends section 38 of P.L.1948, c.67 (C.17:9A-38) to  
27 make the new prudent investor rule applicable to the investments of  
28 common trust funds maintained by New Jersey banks.

29 The bill provides that the Director of the Division of Investment  
30 shall not be subject to the fiduciary standards of the new "Prudent  
31 Investor Act," and keeps the director subject to fiduciary standards  
32 identical to the standards of the current "Prudent Investment Law"  
33 (N.J.S.A.3B:20-12 et seq.) when the director invests and manages  
34 funds in the custody of the State Treasurer.

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39 Concerns the investment and management of certain trust estates by  
40 fiduciaries and of certain funds by the Director of the Division of  
41 Investment.

SENATE MANAGEMENT, INVESTMENT AND FINANCIAL  
INSTITUTIONS COMMITTEE

STATEMENT TO

**SENATE, No. 1092**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 6, 1996

The Senate Management, Investment and Financial Institutions Committee reports favorably and with committee amendments, Senate Bill No. 1092.

This bill, as amended, repeals existing law, N.J.S.3B:20-12 through 17, commonly known as the "prudent man rule" and, in its place, establishes a new prudent investor rule for fiduciaries in New Jersey. The bill incorporates many of the provisions of the Uniform Prudent Investor Act recently adopted by the National Conference of Commissioners on Uniform State Laws which, in turn, drew upon the revised standards for prudent trust investment stated in the Restatement (Third) of Trusts: Prudent Investor Rule (1992).

Fiduciaries must follow the investment standard set forth in their governing instrument, such as a will, deed, agreement or court order pursuant to which money or other property is entrusted to a fiduciary. If no standards are specified, the bill requires that the fiduciary comply with the new prudent investor rule. The bill's definition of "fiduciary" includes executors, trustees, guardians, conservators and "every other individual or corporation charged with the duty of administering a trust estate."

The bill changes substantially the criteria for prudent investing by fiduciaries. The bill requires a fiduciary to invest trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust, requires the fiduciary to exercise reasonable care, skill and caution and imposes upon the fiduciary the duties of loyalty and impartiality toward beneficiaries. The bill incorporates the "modern portfolio theory," by specifying that a fiduciary's investment and management decisions respecting individual assets are not to be evaluated in isolation, but in the context of the trust portfolio as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust. In the context of this "modern portfolio theory," no specific investment or course of action is per se imprudent, so long as each investment or course of action is consistent with an

overall investment strategy as required under the standard of care set forth in the bill. Specific circumstances that a fiduciary should consider in investing and managing trust assets are set forth in the bill, but the list is not intended to be exclusive. The fiduciary is required to take reasonable steps to verify facts relevant to the investment and management of trust assets and is protected in relying on certain information contained in or offered by any financial, statistical, investment, rating or other publication or other service published for the use of and accepted as reliable by investors in like investments or upon a copy of the prospectus prepared and filed with the Securities and Exchange Commission in connection with a new issue.

The bill requires a fiduciary to diversify the investments of the trust unless it is reasonably determined that, because of special circumstances, the purposes of the trust are better served without diversification.

The new prudent investor rule imposes a standard of conduct, not of performance or outcome. Compliance by a fiduciary is determined in light of the facts and circumstances existing at the time of the fiduciary's decision or action.

The second major revision to current law made by the bill concerns delegation of investment responsibility. The bill allows a fiduciary to delegate investment and management functions that a prudent fiduciary of comparable skills could properly delegate under the circumstances.

A fiduciary that exercises reasonable care, skill and caution in selecting an investment agent, establishing the scope and terms of the delegated function, and periodically monitoring the agent's performance and compliance with the scope and terms of the delegation shall not be liable to the beneficiaries or to the trust for the agent's decisions or actions. The agent to whom a fiduciary has delegated investment responsibility owes to the trustee and to the beneficiaries the same duties as the fiduciary and shall be held to the same standards as the fiduciary. The bill makes the agent subject to the jurisdiction of the courts of New Jersey, even if the agent delegation agreement provides otherwise. The bill requires the fiduciary to give the income beneficiaries advance notice of any intended delegation.

In investing and managing trust assets, the bill requires that a fiduciary incur only those costs that are appropriate and reasonable in relation to the assets, the trust purposes and the skills of the fiduciary. To protect the beneficiaries, where the fiduciary has delegated investment responsibility the bill requires a reduction in the fiduciary's compensation to reflect the fiduciary's lessened responsibilities.

The bill also amends section 38 of P.L.1948, c.67 (C.17:9A-38) to make the new prudent investor rule applicable to the investments of common trust funds maintained by New Jersey banks.

The bill provides that the Director of the Division of Investment shall not be subject to the fiduciary standards of the new "Prudent Investor Act," and keeps the director subject to fiduciary standards



identical to the standards of the current "Prudent Investment Law" (N.J.S.A.3B:20-12 et seq.) when the director invests and manages funds in the custody of the State Treasurer.

Finally, the bill makes the provisions of the "Prudent Investment Act" applicable to trusts existing on and created after its effective date.

Amendments to the bill require a fiduciary to review the trust assets and make and implement decisions concerning the retention and disposition of assets received at the inception of the trust within six months after accepting trust assets; delete the 1837 Surplus Revenue Fund from, and add the Judicial Retirement System of New Jersey and all other funds in the custody of the State Treasurer, unless otherwise provided by law, to the list of funds for which the Director of the Division of Investment has the authority to invest and reinvest the moneys in, and to acquire for or on behalf of, such investments which are authorized or approved for investment by regulation of the State Investment Council; and remove a duplicate definition of investments as this definition relates to the functions of the Director of the Division of Investments.