

# ASSEMBLY, No. 2760

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED SEPTEMBER 19, 2002

**Sponsored by:**

**Assemblyman JACK CONNERS**

**District 7 (Burlington and Camden)**

**Assemblyman HERBERT CONAWAY, JR.**

**District 7 (Burlington and Camden)**

**Co-Sponsored by:**

**Assemblymen Diegnan, Bateman and Pennacchio**

**SYNOPSIS**

Revises investment requirements for charitable gift annuity reserves.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 11/8/2002)**

A2760 CONNERS, CONAWAY

2

1 AN ACT concerning the investment of charitable gift annuity reserves  
2 and amending N.J.S.17B:17-13.1.

3

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

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7 1. N.J.S.17B:17-13.1 is amended to read as follows:

8 17B:17-13.1. a. The commissioner may, in his discretion, issue a  
9 special permit to a qualified nonprofit domestic or foreign corporation  
10 or association organized without capital stock or not for profit,  
11 engaged solely in bona fide charitable, religious, missionary,  
12 educational or philanthropic activities and which shall have been in  
13 active operation for at least ten years authorizing any such corporation  
14 or association to enter into annuity agreements with donors. Before  
15 issuing any such special permit the commissioner shall promulgate  
16 rules and regulations governing such annuity agreements and permit  
17 holders with respect to such annuity agreements. Such rules and  
18 regulations shall, in addition to such other provisions as the  
19 commissioner may determine to be necessary or desirable to protect  
20 the public, provide that each applicant for a special permit shall submit  
21 to the commissioner copies of its form of agreements with donors, and  
22 a schedule of its maximum annuity rates, which rates shall be so  
23 computed, on the basis of the standard valuation law, as to return to  
24 the special permit holder, upon the death of the annuitant, a residue at  
25 least equal to one-half of the original gift or other consideration for  
26 such annuity.

27 b. Each such special permit holder shall have and maintain  
28 segregated assets at least equal to the sum of the reserves on its  
29 outstanding agreements calculated in accordance with the provisions  
30 of Chapter 19 of this Code, and a surplus of ten per centum of such  
31 reserves or the amount of \$100,000, whichever is higher, and such  
32 assets shall be segregated as separate and distinct funds, independent  
33 of all other funds of such special permit holder and shall not be  
34 applied for the payment of the debts and obligations of the special  
35 permit holder other than with respect to annuity agreements. In  
36 determining the reserves of any such special permit holder, a deduction  
37 shall be made for all or any portion of an annuity risk which is lawfully  
38 reinsured by an authorized insurer. Segregated assets herein required  
39 to be maintained shall be invested in [the same manner and subject to  
40 the same restrictions as herein provided for investments of domestic  
41 insurers unless more restrictive provisions are contained in applicable  
42 statutes regulating any such permit holder and except as the  
43 commissioner may otherwise provide by regulation] accordance with

**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 the provisions of the "Prudent Investor Act," P.L.1997, c.26  
2 (C.3B:20-11.1 et seq).

3 c. Any corporation or association defined in subsection a. hereof  
4 which, prior to the effective date of this Code, has entered into annuity  
5 agreements shall obtain a special permit as herein provided prior to  
6 entering into any new or additional annuity agreements provided,  
7 however, that the commissioner shall by regulation allow a period of  
8 time, which shall not be more than 5 years following the effective date  
9 of this Code for any such corporation or association to comply with  
10 the provisions of subsection b. of this section with respect to any  
11 annuity agreement entered into prior to the effective date of this Code.  
12 The commissioner, in his discretion may extend such time for a  
13 reasonable period.

14 d. If the commissioner finds that any special permit holder has  
15 failed to comply with the requirements of this section or of any rule or  
16 regulation of the commissioner issued hereunder, he may by  
17 appropriate order, subject to the provisions of the Administrative  
18 Procedure Act (P.L.1968, c.410), Chapter 34 of this Code and any  
19 rules adopted thereunder suspend or revoke any such special permit  
20 and he may take such other action to restrain or enjoin any such  
21 violation as may be otherwise provided by law. In addition the  
22 commissioner may make such orders as he deems desirable and  
23 necessary to afford appropriate financial security to the annuitants.  
24 The commissioner may require that special permit holders submit  
25 periodically such reports as he may deem desirable or necessary to  
26 ascertain compliance with requirements of this section and the  
27 commissioner may, whenever he deems it expedient, make or cause to  
28 be made an examination of the assets and liabilities and other affairs of  
29 any such special permit holder as the same pertains to annuity  
30 agreements entered into pursuant to this section. The reasonable  
31 expenses of any such examination shall be fixed and determined by the  
32 commissioner, and he shall collect them from the special permit holder  
33 examined, who shall pay them on presentation of a detailed account of  
34 the expenses.

35 e. No special permit holder shall be deemed an insurer as defined  
36 in this Code.

37 (cf: N.J.S.17B:17-13.1)

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39 2. This act shall take effect immediately.

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#### STATEMENT

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44 This bill provides that funds or other assets donated by an  
45 individual to a nonprofit or charitable organization, in exchange for a  
46 fixed annuity payment for life, shall be invested in accordance with the

1 provisions of New Jersey's "Prudent Investor Act." Under current  
2 law, nonprofit and charitable organizations are required to invest 85  
3 to 90% of these gift assets in the same manner and subject to the same  
4 restrictions as for investments of domestic life and health insurers, in  
5 fixed income investment instruments. However, over time, the  
6 practical effect of this requirement has been to limit investment return.

7 Charitable gift annuities are primarily a means for donors to make  
8 a gift to a charity, while providing guaranteed, fixed income payments  
9 to the donor or other named beneficiaries during the donor's lifetime.  
10 The nonprofit or charitable organization invests the gift principal, and  
11 upon the death of the donor or other designated income beneficiary,  
12 the remainder of the gift becomes the property of the organization to  
13 use in furtherance of its charitable purposes.

14 In accordance with prudent investor guidelines, a fiduciary is  
15 required to invest trust assets as a prudent investor would, by  
16 considering the purposes, terms, distribution requirements, and other  
17 circumstances of the trust, and incorporates the "modern portfolio  
18 theory," by specifying that a fiduciary's investment and management  
19 decisions respecting individual assets are not to be evaluated in  
20 isolation, but in the context of the trust portfolio as a whole and as  
21 part of an overall investment strategy having risk and return objectives  
22 reasonably suited to the trust.

23 This bill would provide nonprofit and charitable organizations  
24 greater flexibility with respect to the investment of their gift annuity  
25 reserves.