

PRESBYTERIAN CHURCH PROPERTY AMENDMENT BILL

AS REPORTED FROM THE JUSTICE AND LAW REFORM COMMITTEE

COMMENTARY

Recommendation

The Justice and Law Reform Committee has carefully considered the Presbyterian Church Property Amendment Bill and—

- (a) Finds that the allegations in the preamble have been proved to its satisfaction, with the exception of recital D; and
- (b) Recommends that the bill be passed with the amendments shown in the bill.

Conduct of the examination

The Presbyterian Church Property Amendment Bill was introduced and referred to the Justice and Law Reform Committee on 18 October 1995. The closing date for submissions was 24 November 1995. The committee received and considered submissions from the Presbyterian Church Property Trustees (the promoters of the bill), the Department for Courts, and Presbyterian Support Services. Twenty-five minutes were spent on the hearing of evidence and consideration took twenty minutes.

This commentary sets out the details of the committee's consideration of the bill and the major issues addressed by the committee.

Purposes of the bill

The bill amends the Presbyterian Church Property Act 1885 and other Acts relating to the Presbyterian Church. The purposes of the amendments are set out in the preamble.

The main changes proposed are:

- To allow the General Assembly of the Presbyterian Church of New Zealand to vary the terms of certain charitable trusts where the original terms of the trust are impossible, impractical, or inexpedient;
- To expand the purposes for which trustees hold trust funds or trust properties for Presbyterian orphanages or children's homes or for persons being cared for in such institutions;

No. 113—2

- To allow the proceeds from the sale of property to be used for purposes other than the purchase of other property, subject to direction from the General Assembly and the discretion of the Trustees;
- To change the name of the Church to the Presbyterian Church of Aotearoa New Zealand.

The bill contains a number of other, minor, amendments.

Reasons for amendments

Declaration of trustees to be filed with District Registrar of Companies

Clause 21 amends section 9 of the principal Act. This clause provides that, where an election of a new trustee or trustees takes place, the moderator is required to file a declaration with the Registrar of the High Court at Wellington stating the name of the new trustee(s) and the names of all current trustees. This is to ensure that an updated list of trustees is kept.

We accepted the Department for Courts' submission that it is not appropriate or necessary for the Registrar of the High Court at Wellington to be involved in the administration of the trust. The Registrar should not be required to deal with papers not related to Court business and there is no legal principle which requires the Registrar to be involved with the trust. However, it is important that a register of trustees be maintained, independent of the trustees, and there are other, more appropriate, repositories for such a register.

We therefore recommend that clause 21 be amended to:

- (a) Provide that the declaration be filed with the District Registrar of Companies at Wellington; and
- (b) Effect a consequential amendment to section 10 of the principal Act.

Consequential amendment to the preamble

Recital D of the preamble makes reference to the High Court at Wellington and we recommend that this be consequentially amended.

KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM A SELECT COMMITTEE

Struck Out

The quick brown fox

Text struck out unanimously

New

The quick brown fox

Text inserted unanimously

Pauline Gardiner

PRESBYTERIAN CHURCH PROPERTY AMENDMENT

[PRIVATE]

ANALYSIS

Title	PART III
Preamble	AMENDMENTS TO PRINCIPAL ACT
1. Short Title	20. Interpretation
2. Interpretation	21. Declaration on election of new Trustees
3. Change of name of Presbyterian Church	22. Common seal
	23. Sale of unsuitable land
	24. Method of contracting
	25. Application of sale proceeds
	26. Duties of managers
	PART IV
	AMENDMENTS TO OTHER ACTS
	<i>Amendments to Presbyterian Church Property Act 1885 Amendment Act 1914</i>
	27. Powers of Trustees
	28. Beneficiary Fund investments
	<i>Amendment to Presbyterian Church Property Amendment Act 1930</i>
	29. Power of delegation
	<i>Amendment to Presbyterian Church Property Trustees Empowering Act 1957</i>
	30. Amalgamated Investment Fund
	<i>Amendments to Presbyterian Church Property Amendment Act 1974</i>
	31. Investment of trust funds
	32. Powers to employ investment managers
	PART V
	MISCELLANEOUS PROVISIONS
	33. Costs of Act
	34. Private Act

A BILL INTITULED

An Act to amend the Presbyterian Church Property Act 1885 and other Acts relating to the Presbyterian Church

WHEREAS—

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- A. The General Assembly of the Presbyterian Church of New Zealand has resolved that the name of the Church shall be the Presbyterian Church of Aotearoa New Zealand:
- B. It is expedient that the General Assembly of the Church should have power to vary certain charitable trusts for Presbyterian purposes where the original purpose is impossible, impracticable, or inexpedient: 10
- C. In consequence of changes in policy and law relating to the care of children and young persons, it is expedient that the purposes for which trustees who hold trust funds or trust properties for the purposes of Presbyterian orphanages or children's homes or for persons being cared for in such orphanages or children's homes should be expanded: 15
- D. It is appropriate that lists of the persons who from time to time hold office as Presbyterian Church Property Trustees be filed in the office of the (*High Court*) District Registrar of Companies at Wellington: 20
- E. It is expedient that the requirements prescribed by the Presbyterian Church Property Act 1885, in relation to the execution of documents and the method of contracting by The Presbyterian Church Property Trustees, be simplified: 25
- F. It is expedient that the powers that may be exercised by the High Court when it orders the sale of land that is not suitable for Church purposes should be extended: 30
- G. It is expedient that the powers of The Presbyterian Church Property Trustees and of managers of congregations to apply funds held for congregations be enlarged: 35
- H. It is desirable that the requirement for the consent of the General Assembly to disposal of property not held for congregations be limited to transactions involving borrowing and certain dealings with real property: 40
- I. It is expedient that the General Assembly of the Church be empowered to appoint alternative trustees of the

Beneficiary Fund of the Presbyterian Church and that provisions for investment be simplified:

- J. It is expedient that the power of the General Assembly to delegate its powers should be extended:
- 5 K. It is expedient to repeal certain provisions relating to the computation and investment of the Amalgamated Investment Fund of the Church:
- L. It is expedient that the powers of The Presbyterian Church Property Trustees to employ agents in the investment and management of Church funds should be extended:
- 10 M. The objects of this Act cannot be attained without the authority of Parliament:
- N. On the 19th day of May 1994 the General Assembly of the Presbyterian Church by resolution authorised The Presbyterian Church Property Trustees to seek legislation to give effect to the above-mentioned purposes:
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20 BE IT THEREFORE ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Presbyterian Church Property Amendment Act 1995, and shall be read together with and deemed part of the Presbyterian Church Property Act 1885* (hereinafter referred to as the principal Act).

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2. Interpretation—In this Act, unless the context otherwise requires, the term “the Trustees” means The Presbyterian Church Property Trustees constituted as a body corporate under section 11 of the principal Act.

30 **3. Change of name of Presbyterian Church**—(1) The Presbyterian Church (as recognised by the principal Act) shall, notwithstanding anything in section 4 of the principal Act, be known, as from the commencement of this Act, as “The Presbyterian Church of Aotearoa New Zealand”.

35 (2) Every reference to the Presbyterian Church of New Zealand in any other enactment or in any document whatsoever shall hereafter, unless the context otherwise requires, be read as a reference to the Presbyterian Church of Aotearoa New Zealand.

*1885, No. 33

Amendments: 1914, No. 1 (Private); 1930, No. 2 (Private); 1963, No. 3 (Private); 1970, No. 6 (Private); 1974, No. 7 (Private)

PART I

VARIATION OF CHURCH TRUSTS

4. Meaning of “trust property”—In this Part of this Act, “trust property” means any money raised or given, or any real or personal property devised, bequeathed, or given or in respect of which a trust is created, whether before or after the commencement of this Act, and held on behalf of the Presbyterian Church or any part of it by a trustee— 5

(a) For any object or purpose directly or indirectly associated with or relating to the Presbyterian Church or the whole or any part of any synod, presbytery, charge, congregation, or mission of the Presbyterian Church; or 10

(b) For the purpose of furthering social services, hospital or residential care, or educational needs directly or indirectly associated with or relating to the Presbyterian Church,— 15

whether or not any such trust property has been invested in real or personal property pending its application for that object or purpose. 20

5. Application of this Part—(1) This Part of this Act shall not apply to any trust property in respect of which, before or after the passing of this Act, a scheme has been approved by the High Court or the Attorney-General under Part III or Part IV of the Charitable Trusts Act 1957 or an application has been made for such approval and not withdrawn. 25

(2) Except as provided in subsection (1) of this section, the provisions of this Part of this Act are in addition to the provisions of the Charitable Trusts Act 1957 and the provisions of section 10 of the Presbyterian Church Property Amendment Act 1974, to the intent that a trust may be varied under this Part of this Act, or under either of the said Acts. 30

6. Scheme for application or disposal of trust property—If—

(a) It becomes or has become impossible or impracticable or inexpedient to carry out the object or purpose of the trust on which any trust property is held; or 35

(b) The amount of any trust property available is inadequate to carry out the object or purpose on which the trust property is held; or 40

(c) The object or purpose on which any trust property is held has been effected already,—

the trustee of the trust property may prepare or cause to be prepared a scheme in writing for the application or disposal of the trust property for some other charitable object or charitable purpose or for a combination of charitable objects or charitable purposes or charitable objects and charitable purposes.

7. Submission of scheme to commission or legal adviser—Every scheme prepared under **section 6** of this Act shall be submitted by the trustee of the trust property to—

- 10 (a) A commission of the Presbyterian Church, which shall be a commission authorised by the General Assembly to consider applications under this Part of this Act and which shall include at least 2 persons having legal qualifications; or
- 15 (b) A legal adviser appointed by the General Assembly.

8. Preparation of schemes for application or disposal of trust property—If a scheme prepared under **section 6** of this Act relates to trust property that is held for a charitable purpose within the meaning of Part III of the Charitable Trusts Act 1957,—

- 20 (a) The scheme shall provide for the application or disposal of that trust property for a purpose of a kind specified in **section 4** of this Act which is also a charitable purpose; and
- 25 (b) The trustee of the trust property in preparing the scheme, and the commission or legal adviser in considering and reporting on the scheme, and the General Assembly to which the scheme is submitted, shall act in accordance with the rules of law that
- 30 would be applied by the High Court on an application made to it under Part III of the Charitable Trusts Act 1957 if the scheme were submitted to the High Court under that Part of that Act.

35 **9. Statement giving full information**—Every scheme submitted under **section 7** of this Act shall be accompanied by a statement giving full information about the reasons for the proposed application or proposed disposal of the trust property, together with a copy of the trust instrument (if any).

40 **10. Notice of scheme**—On receipt of the scheme, the commission of the Presbyterian Church or the legal adviser to

whom the scheme is submitted shall direct the trustee of the trust property as to the person or persons (if any) who shall be served with notice of the scheme and in what manner (if any) public notice of the scheme shall be given.

11. Right to object or to make representations—Any notice served or given under **section 10** of this Act— 5

(a) Shall state that any person may, within 60 days after the receipt or publication of the notice,—

(i) Lodge with the commission or legal adviser written objections to the scheme; or 10

(ii) Make written representations concerning the scheme to the commission or legal adviser; and

(b) Shall specify an address to which any such written objection or written representation may be sent within 60 days after the receipt or publication of the notice. 15

12. Powers and duties of commission or legal adviser—(1) The commission or legal adviser may, if it or the legal adviser thinks fit, after considering the scheme and any objections or representations made in respect of the scheme, remit the scheme to the trustee of the trust property for consideration of any amendments the commission or legal adviser may suggest. 20

(2) Subject to **sections 13 and 14** of this Act, the commission or legal adviser— 25

(a) Shall report on the scheme with such amendments (if any) as the trustee of the trust property may accept; and

(b) Shall submit to the General Assembly—

(i) The scheme; and 30

(ii) The report made by the commission or legal adviser on the scheme; and

(iii) Any objections or representations made in respect of the scheme.

13. Notice to Attorney-General where trust is for charitable purpose—Where the scheme relates to trust property that is held for a charitable purpose within the meaning of Part III of the Charitable Trusts Act 1957, the commission or legal adviser shall, before reporting on the scheme under **section 12** of this Act, send to the Attorney-General written notice of the scheme, together with copies of 35 40

the statement and trust instrument referred to in **section 9** of this Act.

5 **14. Objections by Attorney-General**—(1) The commission or legal adviser shall, in reporting on the scheme under **section 12** of this Act, have regard to any objections that are given to the commission or the legal adviser by the Attorney-General within 90 days after the date on which the notice under **section 13** of this Act is given to the Attorney-General.

10 (2) If the Attorney-General objects to the scheme on the ground that the scheme is not one that should be approved by the Court under Part III of the Charitable Trusts Act 1957, the scheme shall not be approved under this Part of this Act.

15 **15. Approval of scheme**—Subject to **sections 13 and 14** of this Act, if the scheme is approved by the General Assembly, it shall have effect according to its tenor, notwithstanding the terms of any instrument by which the trust was created.

PART II

ORPHANAGE TRUSTS

20 **16. General application of this Part**—(1) This Part of this Act applies to the following trust funds:

(a) All trust funds that, at the commencement of this Act, are vested in the Trustees or in other trustees—

25 (i) For the purposes of Presbyterian orphanages or children's homes in New Zealand; or

(ii) For the care, welfare or benefit of persons being cared for or formerly cared for in Presbyterian orphanages or children's homes in New Zealand; and

30 (b) Any trust funds that, after the commencement of this Act, are received or held by the Trustees or other trustees for any of the purposes specified in **paragraph (a)** of this subsection.

(2) This Part of this Act shall not apply where there is no general charitable intention in the trust or where the trust is not charitable.

35 (3) This Part of this Act applies whether the instrument creating the relevant trust was executed before or after the passing of this Act.

40 **17. Orphanage trusts**—(1) Notwithstanding the terms of any trust, but subject to **subsection (2)** of this section, every trust fund to which this Part of this Act applies that is held by the

Trustees shall be held and administered for the welfare of children in New Zealand.

(2) Where any trust fund to which this Part of this Act applies is held by the Trustees for the purposes of or in connection with a specific Presbyterian orphanage or children's home, **subsection (1)** of this section shall apply in relation to that trust fund only where it is impossible or impracticable or inexpedient to give effect to those original purposes. 5

18. Power to transfer trust funds and properties— 10

(1) Any trustee or other person, whether incorporated or not, who, at the commencement of this Act or after the commencement of this Act, hold funds or properties on trust for any of the purposes specified in **section 16** of this Act may pay or transfer the whole or any part of any such funds or properties to the Trustees or to the appropriate incorporated social service organisation or organisations of the Presbyterian Church in the area concerned to be held by the Trustees or by such incorporated social service organisation or organisations as trustee or trustees thereof. 15 20

(2) Where any funds or property are, under **subsection (1)** of this section, paid or transferred to the Trustees or to any such incorporated social service organisation or organisations, the Trustees or the incorporated social service organisation or organisations may apply the funds or property so paid or transferred as if,— 25

(a) In the case of the Trustees, the funds or property were funds or property held by the Trustees under **section 17** of this Act; and

(b) In the case of the incorporated social service organisation or organisations, that organisation or those organisations, as the case may be, were the Trustees and the funds or property were held by the Trustees under **section 17** of this Act. 30

(3) **Subsection (2)** of this section shall have effect notwithstanding that the powers of application conferred by this Act in relation to the funds or property transferred are wider than the powers conferred on the transferor by any instrument creating the trust. 35

(4) The Trustees may invest and amalgamate funds transferred to the Trustees under **subsection (1)** of this section with other trust funds held by the Trustees in the Amalgamated Investment Fund established under the Presbyterian Church Property Trustees Empowering Act 1957. 40

(5) No trustee or other person who pays or transfers, under subsection (1) of this section, the whole or any part of any funds or properties shall remain liable for the proper application of the capital and income of those transferred funds or properties in accordance with any instrument creating the trusts, but the Trustees or other transferee shall, subject to the modifications made to the trusts by this Act, become liable for the proper application and administration of the capital and income of those funds or properties in accordance with any instrument creating the trusts.

19. Power of the Trustees to act with other persons—
The Trustees may, in the exercise of their powers under sections 17 and 18 of this Act, join or act in association with any other persons or bodies of persons in doing any act or thing which, in the opinion of the Trustees, will be for the benefit or the welfare of children in New Zealand.

PART III

AMENDMENTS TO PRINCIPAL ACT

20. Interpretation—Section 3 of the principal Act is hereby amended by repealing the definition of the term “Presbyterian Church”, and substituting the following definition:

“ ‘Presbyterian Church’ means the Presbyterian Church of Aotearoa New Zealand, formerly known as the Presbyterian Church of New Zealand, as recognised by this Act:”.

21. Declaration on election of new Trustees—(1) The principal Act is hereby amended by repealing section 9, and substituting the following section:

“9. When, under the provisions of this Act, a new election of trustees, or of any trustee, is made, the Moderator shall make and cause to be filed in the office of the (*Registrar of the High Court*) District Registrar of Companies at Wellington, a like declaration, countersigned by the Clerk of the General Assembly, stating—

“(a) The names of the newly-elected trustee or trustees; and
“(b) The names of all the trustees holding office at the date of the declaration.”

New (Unanimous)

(2) Section 10 of the principal Act is hereby consequentially amended—

- (a) By omitting the words “and seal of the Registrar of the High Court”, and substituting the words “of the District Registrar of Companies”; and 5
- (b) By omitting the words “seal or”.

22. Common seal—Section 14 of the principal Act is hereby amended by adding, as subsection (2), the following subsection: 10

- “(2) Any affixing of the common seal shall be attested by—
- “(a) Two Trustees; or
- “(b) Two persons authorised for the purpose by by-laws made under this Act.”

23. Sale of unsuitable land—(1) Section 21 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection: 15

“(2) If the Judge is satisfied that it is for the benefit or convenience of the persons or body for whose benefit or in whose behalf such land was originally granted or conveyed, the Court— 20

- “(a) May order that the said land shall be sold at such time and manner and on such conditions as the Court thinks fit;
- “(b) May order that other land shall be purchased in lieu of the land sold: 25
- “(c) May authorise an exchange of land including payment to be given or received by way of equality of exchange;
- “(d) May direct the trusts upon which the proceeds of sale (including any money received by way of equality of exchange) are to be held or applied.” 30

(2) Section 21 of the principal Act is hereby further amended by repealing subsection (4), and substituting the following subsection: 35

“(4) Subject to the terms of any order made under subsection (2) of this section, the sale proceeds and any land purchased or taken in exchange or received by way of equality of exchange, shall be held by the Trustees upon and subject to the like trusts

and for the like purposes and objects as the land so originally granted or conveyed was held.”

5 **24. Method of contracting**—The principal Act is hereby amended by repealing section 24, and substituting the following section:

“24. (1) A contract or other enforceable obligation may be entered into by the Trustees as follows:

10 “(a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Trustees in writing under seal:

15 “(b) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Trustees in writing by a person acting under the express or implied authority of the Trustees:

20 “(c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Trustees in writing or orally by a person acting under the express or implied authority of the Trustees.

“(2) **Subsection (1)** of this section applies to a contract or other obligation—

25 “(a) Whether or not that contract or obligation was entered into in New Zealand; and

“(b) Whether or not the law governing the contract or obligation is the law of New Zealand.”

30 **25. Application of sale proceeds**—(1) The Second Schedule to the principal Act is hereby amended by repealing clause 6 (as amended by section 3 (7) (b) of the Presbyterian Church Property Amendment Act 1974), and substituting the following clauses:

35 “6. All money arising from such sale, or received by the Trustees for equality of exchange, after payment of the costs and expenses payable by them in relation to such sale or exchange shall, subject to **clause 6A** of this Schedule, be expended—

40 “(a) In the absolute purchase of other lands of like tenure and interest to those disposed of; or

“(b) For the purchase of other land in fee-simple; or

“(c) The erection or purchase of buildings for church purposes.

“6A. Notwithstanding **clause 6** of this Schedule, any money to which that clause applies—

“(a) May be applied, subject to any directions of the General Assembly for the time being in force and at the discretion of the Trustees, for such other church purposes as the congregation and the Presbytery of the bounds shall request; or 5

“(b) May be invested in such investments as are from time to time authorised by this Act for the investment of trust funds.” 10

(2) Section 3 (7) (b) of the Presbyterian Church Property Amendment Act 1974 is hereby consequentially repealed.

26. Duties of managers—The Second Schedule to the principal Act is hereby further amended by repealing paragraph (4) of clause 11, and substituting the following paragraph: 15

“(4) And generally the payment of all charges and expenses incurred by them in the performance of their duties as such managers or for such other charitable purposes as may be directed by the congregation with the approval of the Presbytery of the bounds.” 20

PART IV

AMENDMENTS TO OTHER ACTS

*Amendments to Presbyterian Church Property Act 1885
Amendment Act 1914* 25

27. Powers of Trustees—(1) Section 5 of the Presbyterian Church Property Act 1885 Amendment Act 1914 is hereby amended by omitting the words “, with the consent of the General Assembly,”.

(2) Paragraph (e) of section 5 of the Presbyterian Church Property Act 1885 Amendment Act 1914 (as amended by section 3 (8) of the Presbyterian Church Property Amendment Act 1974) is hereby amended by inserting, after the word “Act”, the words “or by the Trustee Act 1956”. 30

(3) Section 5 of the Presbyterian Church Property Act 1885 Amendment Act 1914 is hereby further amended by adding, as subsection (2), the following subsection: 35

“(2) The powers of sale or exchange contained in paragraphs (a) and (c) of subsection (1) of this section may, in relation to land, be exercised only with the consent of the General Assembly, and the power of borrowing contained in 40

paragraph (b) of subsection (1) of this section may be exercised only with the consent of the General Assembly.”

5 **28. Beneficiary Fund investments**—(1) Section 5A of the Presbyterian Church Property Act 1885 Amendment Act 1914 (as inserted by section 4 of the Presbyterian Church Property Amendment Act 1963 and amended by section 4 of the Presbyterian Church Property Amendment Act 1974) is hereby amended by repealing subsection (1), and substituting the following subsection:

10 “(1) The Beneficiary Fund of the Presbyterian Church and its investments shall be invested and managed by the Trustees or by such other trustees as the General Assembly shall from time to time direct or approve:

15 “Provided that nothing contained or implied in this subsection shall authorise the investment of any part of the said Beneficiary Fund in the shares or other securities of any company the principal business or source of income of which is the business of brewers, distillers, licensed hotel proprietors, or wine and spirit merchants.”

20 (2) Section 4 of the Presbyterian Church Property Amendment Act 1974 is hereby consequentially repealed.

Amendment to Presbyterian Church Property Amendment Act 1930

25 **29. Power of delegation**—Section 2 (1) of the Presbyterian Church Property Amendment Act 1930 is hereby amended by omitting the expression “section five”, and substituting the expression “sections 4 and 5”.

Amendment to Presbyterian Church Property Trustees Empowering Act 1957

30 **30. Amalgamated Investment Fund**—Subsection 3 (8) of the Presbyterian Church Property Trustees Empowering Act 1957 (as substituted by section 5 (2) of the Presbyterian Church Property Amendment Act 1974) is hereby amended by repealing the proviso.

35 *Amendments to Presbyterian Church Property Amendment Act 1974*

40 **31. Investment of trust funds**—Section 3 of the Presbyterian Church Property Amendment Act 1974 is hereby amended by repealing subsections (2) to (4), and substituting the following subsection:

“(2) The Trustees may from time to time invest any trust funds to which this section applies, whether at the time in a state of investment or not, in investments authorised for the investment of trust funds by the Trustee Act 1956 or by any other Act conferring powers on trustees.”

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32. Powers to employ investment managers—The Presbyterian Church Property Amendment Act 1974 is hereby amended by inserting, after section 11, the following section:

“11A. (1) The Trustees may, in the exercise of their investment powers, engage and employ agents or investment managers for the purpose of making and managing investments and may permit security to be held for the Trustees in the name of a nominee or custodian.

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“(2) Nothing in subsection (1) of this section shall limit or restrict any duty of care of the Trustees in relation to—

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“(a) The engagement or employment under that subsection of agents or investment managers; or

“(b) The supervision of agents or investment managers engaged or employed under that subsection.”

PART V

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MISCELLANEOUS PROVISIONS

33. Costs of Act—All costs, charges, disbursements, and expenses incidental to the preparation, obtaining, and passing of this Act shall be paid by the Outreach Fund of the General Assembly.

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34. Private Act—This Act is hereby declared to be a private Act.