

[Third Reprint]
ASSEMBLY, No. 832

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen ARNONE, JONES
and Assemblywoman Heck

1 AN ACT concerning the investment powers of boards of education and
2 local units and amending P.L.1977, c.177 and P.L.1977, c.396.

3

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

6

7 1. Section 1 of P.L.1977, c.177 (C.18A:20-37) is amended to read
8 as follows:

9 1. ¹a.¹ When authorized by resolution adopted by a majority vote
10 of all its members the board of education of any school district may
11 use moneys, which may be in hand, for the purchase of the following
12 types of securities which, if suitable for registry, may be registered in
13 the name of the school district:

14 ¹[a.] (1)¹ Bonds or other obligations of the United States of
15 America or obligations guaranteed by the United States of America ¹[,
16 including securities of, or other interests in, any open-end or
17 closed-end management type investment company or investment trust
18 registered under the "Investment Company Act of 1940," 54 Stat.
19 **[847] 789** (15 U.S.C.§80a-1 et seq.), purchased and redeemed only
20 through the use of National or State banks located within this State or
21 other financial intermediaries registered pursuant to section 9 of
22 P.L.1967, c.93 (C.49:3-56), if the portfolio of that investment
23 company or investment trust is limited to bonds or other obligations
24 of the United States of America, bonds or other obligations guaranteed
25 by the United States of America and repurchase agreements fully
26 collateralized by bonds or other obligations of the United States of
27 America or bonds or other obligations guaranteed by the United States
28 of America, which collateral shall be delivered to or held by the
29 investment company or investment trust, either directly or through an

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:

¹ Assembly AFI committee amendments adopted March 4, 1996.

² Assembly floor amendments adopted March 28, 1996.

³ Senate SSG committee amendments adopted November 18, 1996.

- 1 authorized custodian;
- 2 b. Bonds of any Federal Intermediate Credit Bank, Federal Home
3 Loan Bank, Federal Land Bank, Federal National Mortgage Associates
4 or of any United States Bank for Cooperatives which have a maturity
5 date not greater than 12 months from the date of purchase; or
- 6 c.]:
- 7 (2) Government money market mutual funds;
- 8 (3) Any obligation that a federal agency or a federal instrumentality
9 has issued in accordance with an act of Congress, which security has
10 a maturity date not greater than ²[12 months] 397 days² from the date
11 of purchase, provided that such obligations bear a fixed rate of interest
12 not dependent on any index or other external factor;
- 13 (4)¹ Bonds or other obligations of the school district ¹[.] or bonds
14 or other obligations of the local unit or units within which the school
15 district is located;
- 16 (5) Bonds or other obligations, having a maturity date of not more
17 than ²[12 months] 397 days² from the date of purchase, approved by
18 the Division of Investment in the Department of the Treasury for
19 investment by ²[local units] school districts² ;
- 20 (6) Local government investment pools;
- 21 (7) Deposits with the State of New Jersey Cash Management Fund
22 established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4
23 ³[et seq.]³); or
- 24 (8) Agreements for the repurchase of fully collateralized securities,
25 ³[where] if³:
- 26 (a) the underlying securities are permitted investments pursuant to
27 paragraphs (1) and (3) of this subsection a.;
- 28 (b) the custody of collateral is transferred to a third party;
- 29 (c) the maturity of the agreement is ³[no] not³ more than 30 days;
- 30 (d) the underlying securities are purchased through a public
31 depository as defined in section 1 of P.L.1970, c.236 (C.17:9-41) and
32 for which a master repurchase agreement providing for the custody
33 and security of collateral is executed.
- 34 b. Any investment instruments ³[where] in which³ the security is
35 not physically held by the school district shall be covered by a third
36 party custodial agreement which shall provide for the designation of
37 such investments in the name of the school board and ³[have such
38 safeguards to]³ prevent unauthorized use of such investments.
- 39 c. Purchase of investment securities shall be executed by the
40 "delivery versus payment" method to ensure that securities are
41 ²[deposited in the financial institution] either received by the school
42 district or a third party custodian² prior to ²or upon² the release of the
43 school district's funds.
- 44 d. Any investments not purchased and redeemed directly from the
45 issuer, ³government money market mutual fund, local government
46 investment pool, or the State of New Jersey Cash Management Fund.³

1 shall be purchased and redeemed through the use of a national or
2 State bank located within this State or ³[other financial intermediary]
3 through a broker-dealer which, at the time of purchase or redemption,
4 has been ³registered ³continuously for a period of at least two years ³
5 pursuant to section 9 of P.L.1967, c.93 (C.49:3-56) ³and has at least
6 \$25 million in capital stock (or equivalent capitalization if not a
7 corporation), surplus reserves for contingencies and undivided
8 profits ³.

9 e. For the purposes of this section:

10 (1) a "government money market mutual fund" means ²[a fund:

11 (a) of] ²an investment company or investment trust ²]. :

12 (a) ²which ²[company or trust] ²is registered with the Securities and
13 Exchange Commission under the "Investment Company Act of 1940,"
14 15 U.S.C. §80a-1 et seq., and ²[which fund is] ²operated in accordance
15 with 17 C.F.R. §270.2a-7;

16 (b) the portfolio of which is limited to U.S. Government securities
17 that meet the definition of an eligible security pursuant to 17 C.F.R.
18 §270.2a-7 and repurchase agreements that are collateralized by such
19 U.S. Government securities; ³and ³

20 (c) which is rated ³[in the highest category] ³by a nationally
21 recognized statistical rating organization ³]; and

22 (d) which does not permit investments in instruments that: are
23 subject to high price volatility with changing market conditions; cannot
24 reasonably be expected, at the time of interest rate adjustment, to have
25 a market value that approximates their par value; or utilize an index
26 that does not support a stable net asset value] ³.

27 (2) a "local government investment pool" means an investment
28 pool:

29 (a) which is managed in accordance with 17 C.F.R. ³[§270.2a7]
30 §270.2a-7 ³;

31 (b) which is rated in the highest category by a nationally
32 recognized statistical rating organization; ³[and] ³

33 (c) the portfolio of which is limited to U.S. Government securities
34 that meet the definition of an eligible security pursuant to 17 C.F.R.
35 §270.2a-7 and repurchase agreements that are collateralized by such
36 U.S. Government securities;

37 (d) which is in compliance with rules adopted pursuant to the
38 "Administrative Procedure Act," P.L.1968, ³[c.412] c.410 ³(C.52:14B-
39 1 et seq.) by the Local Finance Board of the Division of Local
40 ³[Finance] Government Services ³in the Department of Community
41 Affairs, which rules shall provide for disclosure and reporting
42 requirements, and other provisions deemed necessary by the board to
43 provide for the safety, liquidity and yield of the investments; and

44 (e) which does not permit investments in instruments that: are
45 subject to high price volatility with changing market conditions;
46 cannot reasonably be expected, at the time of interest rate adjustment,

1 to have a market value that approximates ³[its] their³ par value; or
2 utilize an index that does not support a stable net asset value.¹

3 ²f. Investments in, or deposits or purchases of financial instruments
4 made pursuant to this section shall not be subject to the requirements
5 of the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.²
6 (cf: P.L.1991, c.458, s.1)

7

8 ¹2. N.J.S.40A:5-14 is amended to read as follows:

9 40A:5-14. a. Each local unit shall adopt a cash management plan
10 and shall deposit its funds pursuant to that plan. The cash
11 management plan shall include ³:

12 (1)³ the designation of a ³public³ depository or depositories as
13 defined in section 1 of P.L.1970, c.236 (C.17:9-41) ³[, designation of
14 any fund that meets the requirements established pursuant to section
15 8 of P.L.1977, c.396 (C.40A:5-15.1), or authorization for investments
16 in other investment instruments as permitted pursuant to law, or any
17 combination of the previously permitted designations or
18 authorization.]³ and may permit deposits in such ³public³ depository
19 or depositories as permitted in section 4 of P.L.1970, c.236
20 (C.17:9-44) ³:

21 (2) the designation of any fund that meets the requirements
22 established pursuant to section 8 of P.L.1977, c.396 (C.40A:5-15.1);

23 (3) the authorization for investments in other investment
24 instruments as permitted by law; or

25 (4) any combination of the designations or authorizations permitted
26 pursuant to this subsection a³. [In lieu of designating a depository or
27 in addition to the designation, the cash management plan may provide
28 that the local unit make deposits with the State of New Jersey Cash
29 Management Fund established pursuant to section 1 of P.L.1977,
30 c.281 (C.52:18A-90.4).]

31 b. The cash management plan shall be approved annually by
32 majority vote of the governing body of the local unit and may be
33 modified from time to time in order to reflect changes in federal or
34 State law or regulations, or in the designations of depositories ³,
35 funds³ or investment instruments. The chief financial officer of the
36 local unit shall be charged with administering the plan.

37 c. The cash management plan shall be designed to assure to the
38 extent practicable the investment of local funds in interest bearing
39 accounts and [may be modified from time to time in order to reflect
40 changes in federal or state law or regulations] other permitted
41 investments. The cash management plan shall be subject to the annual
42 audit conducted pursuant to N.J.S.40A:5-4. When an investment in
43 bonds maturing in more than one year is authorized, the maturity of
44 ³[such] those³ bonds ³[must] shall³ approximate the prospective use
45 of the funds invested.

46 d. The cash management plan may include authorization to invest

1 in any of the investments authorized pursuant to ³section 8 of³
 2 P.L.1977, c.396 (C.40A:5-15.1) and shall set policies for selecting and
 3 evaluating investment instruments accordingly. Such policies shall
 4 consider preservation of capital, liquidity, current and historical
 5 investment returns, diversification, maturity requirements, costs and
 6 fees, and when appropriate, policies of investment instrument
 7 administrators. Policies shall be based on a cash flow analysis
 8 prepared by the chief financial officer and be commensurate with the
 9 nature and size of the funds held by the local unit. All investments
 10 shall be made on a competitive basis insofar as practicable.

11 e. The cash management plan shall require a monthly report to the
 12 governing body summarizing all investments made or redeemed since
 13 the last meeting. The report shall set forth each organization holding
 14 local unit funds, the amount of securities purchased or sold, class or
 15 type of securities purchased, book value, earned income, fees incurred,
 16 and market value of all investments as of the report date and other
 17 information that may be required by the governing body.

18 f. The official charged with the custody of moneys of a local unit
 19 shall deposit or invest them as designated by the cash management
 20 plan and shall thereafter be relieved of any liability for loss of such
 21 moneys due to the insolvency or closing of any depository or fund
 22 designated in the cash management plan.

23 g. Any official involved in the ³[naming] designation³ of
 24 depositories or government money market mutual funds, ³or in the
 25 authorization for investment in other investment instruments, or any
 26 combination of the preceding,³ pursuant to subsection a. of this
 27 section, or³the³ selection of an entity seeking to sell an investment to
 28 the local unit who has a material business or personal relationship with
 29 that organization shall disclose that relationship to the governing body
 30 of the local unit and to the Local ³[Government Ethics] Finance³
 31 Board ³or a county or municipal ethics board, as appropriate³ .

32 h. The registered principal of any security brokerage firm selling
 33 securities to the local unit shall be provided with, and sign an
 34 acknowledgment that the principal has seen and reviewed the local
 35 unit's cash management plan, and ³[certifies]³ that the firm³ [has
 36 implemented controls against] shall not execute transactions resulting
 37 in³ investments that are ³[contrary to]³ not authorized under³ the local
 38 unit's cash management plan or State law.¹

39 (cf: P.L.1983, c.8, s.2)

40

41 ¹[2.] ³.¹ Section 8 of P.L.1977, c.396 (C.40A:5-15.1) is amended
 42 to read as follows:

43 8. Securities which may be purchased by local units.

44 ¹a.¹ When authorized by ¹[resolution adopted by a majority vote
 45 of all its members, the governing body of] a cash management plan
 46 approved pursuant to N.J.S.40A:5-14,¹ any local unit may use moneys

1 which may be in hand for the purchase of the following types of
 2 securities which, if suitable for registry, may be registered in the name
 3 of the local unit:

4 ¹[a.] (1)¹ Bonds or other obligations of the United States of
 5 America or obligations guaranteed by the United States of America ¹[,
 6 including securities of, or other interests in, any open-end or
 7 closed-end management type investment company or investment trust
 8 registered under the "Investment Company Act of 1940," 54 Stat.
 9 [847] 789 (15 U.S.C. §80a-1 et seq.), purchased and redeemed only
 10 through the use of National or State banks located within this State or
 11 other financial intermediaries registered pursuant to section 9 of
 12 P.L.1967, c.93 (C.49:3-56), if the portfolio of that investment
 13 company or investment trust is limited to bonds or other obligations
 14 of the United States of America, bonds or other obligations guaranteed
 15 by the United States of America and repurchase agreements fully
 16 collateralized by bonds or other obligations of the United States of
 17 America or bonds or other obligations guaranteed by the United States
 18 of America, which collateral shall be delivered to or held by the
 19 investment company or investment trust, either directly or through an
 20 authorized custodian;

21 b. Bonds of any Federal Intermediate Credit Bank, Federal Home
 22 Loan Bank, Federal Land Bank, Federal National Mortgage Associates
 23 or of any United States Bank for Cooperatives which have a maturity
 24 date not greater than 12 months from the date of purchase;

25 c.];

26 (2) Government money market mutual funds;

27 (3) Any obligation that a federal agency or a federal instrumentality
 28 has issued in accordance with an act of Congress, which security has
 29 a maturity date not greater than ²[12 months] 397 days² from the date
 30 of purchase, provided that such obligation bears a fixed rate of interest
 31 not dependent on any index or other external factor³[.]³

32 (4)¹ Bonds or other obligations of the local unit or bonds or other
 33 obligations of school districts of which the local unit is a part or within
 34 which the school district is located; ¹[or

35 d.] (5)¹ Bonds or other obligations, having a maturity date not
 36 more than ²[12 months] 397 days² from the date of purchase,
 37 approved by the Division of Investment of the Department of the
 38 Treasury for investment by local units ³[.]³

39 ¹(6) Local government investment pools;

40 (7) Deposits with the State of New Jersey Cash Management Fund
 41 established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4);
 42 or

43 (8) Agreements for the repurchase of fully collateralized
 44 securities, ³[where] if³:

45 (a) the underlying securities are permitted investments pursuant to
 46 paragraphs (1) and (3) of this subsection a.;

- 1 (b) the custody of collateral is transferred to a third party;
2 (c) the maturity of the agreement is not more ³[that] than ³30
3 days;
4 (d) the underlying securities are purchased through a public
5 depository as defined in section 1 of P.L.1970, c.236 (C.17:9-41); and
6 (e) a master repurchase agreement providing for the custody and
7 security of collateral is executed.
- 8 b. Any investment instruments ³[where] in which³ the security is
9 not physically held by the local unit shall be covered by a third party
10 custodial agreement which shall provide for the designation of such
11 investments in the name of the local unit and ³[have such safeguards
12 to]³ prevent unauthorized use of such investments.
- 13 c. Purchase of investment securities shall be executed by the
14 "delivery versus payment" method to ensure that securities are
15 ²[deposited in the financial institution] either received by the local unit
16 or a third party custodian² prior to ²or upon² the release of the local
17 unit's funds.
- 18 d. Any investments not purchased and redeemed directly from the
19 issuer, ³government money market mutual fund, local government
20 investment pool, or the State of New Jersey Cash Management Fund,³
21 shall be purchased and redeemed through the use of a national or
22 State bank located within this State or ³[other financial intermediary]
23 through a broker-dealer which, at the time of purchase or redemption,
24 has been ³registered ³continuously for a period of at least two years³
25 pursuant to section 9 of P.L.1967, c.93 (C.49:3-56) ³and has at least
26 \$25 million in capital stock (or equivalent capitalization if not a
27 corporation), surplus reserves for contingencies and undivided
28 profits³.
- 29 e. For the purposes of this section:
30 (1) a "government money market mutual fund" means ²[a fund:
31 (a) of]² an investment company or investment trust ²[,] :
32 (a)² which ²[company or trust]² is registered with the Securities
33 and Exchange Commission under the "Investment Company Act of
34 1940," 15 U.S.C. §80a-1 et seq., and ²[which fund is]² operated in
35 accordance with 17 C.F.R. §270.2a-7;
36 (b) the portfolio of which is limited to U.S. Government securities
37 that meet the definition of an eligible security pursuant to 17 C.F.R.
38 §270.2a-7 and repurchase agreements that are collateralized by such
39 U.S. Government securities; ²[and]² ³and³
40 (c) which is rated ³[in the highest category]³ by a nationally
41 recognized statistical rating organization ³[; and
42 (d) which does not permit investments in instruments that: are
43 subject to high price volatility with changing market conditions; cannot
44 reasonably be expected, at the time of interest rate adjustment, to have
45 a market value that approximates their par value; or utilize an index
46 that does not support a stable net asset value]³.

1 (2) a "local government investment pool" means an investment
2 pool:

3 (a) which is managed in accordance with 17 C.F.R. ³[§270.2a7]
4 §270.2a-7³:

5 (b) which is rated in the highest category by a nationally
6 recognized statistical rating organization; ²[and]²

7 (c) which is limited to U.S. Government securities that meet the
8 definition of an eligible security pursuant to 17 C.F.R. §270.2a-7 and
9 repurchase agreements that are collateralized by such U.S.
10 Government securities;

11 (d) which is in compliance with rules adopted pursuant to the
12 "Administrative Procedure Act," P.L.1968, ³[c.412] c.410 ³
13 (C.52:14B-1 et seq.) by the Local Finance Board of the Division of
14 Local ³[Finance] Government Services³ in the Department of
15 Community Affairs, which rules shall provide for disclosure and
16 reporting requirements, and other provisions deemed necessary by the
17 board to provide for the safety, liquidity and yield of the investments;
18 and

19 (e) which does not permit investments in instruments that: are
20 subject to high price volatility with changing market conditions;
21 cannot reasonably be expected, at the time of interest rate adjustment,
22 to have a market value that approximates ³[its] their³ par value; or
23 utilize an index that does not support a stable net asset value.¹

24 ²f. Investments in, or deposits or purchases of financial instruments
25 made pursuant to this section shall not be subject to the requirements
26 of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et
27 seq.).²

28 (cf: P.L.1991, c.458, s.2)

30 ¹[3.] 4.¹ This act shall take effect immediately.

31

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33

34

35 Allows school boards and local units to invest mutual funds through
36 certain financial intermediaries other than banks.