

[Fourth 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. 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) 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.

⁴ Senate SBA committee amendments adopted December 16, 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 State
2 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 been³ registered ³continuously for a period of at least two years³
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 profits³
8 ⁴, or through a securities dealer who makes primary markets in U.S.
9 Government securities and reports daily to the Federal Reserve Bank
10 of New York its position in and borrowing on such U.S. Government
11 securities⁴.

12 e. For the purposes of this section:

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

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

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

19 (b) the portfolio of which is limited to U.S. Government securities
20 that meet the definition of an eligible security pursuant to 17
21 C.F.R. §270.2a-7 and repurchase agreements that are collateralized by
22 such U.S. Government securities; ³and³

23 (c) which ⁴[is rated ³[in the highest category]³ by a nationally
24 recognized statistical rating organization] has:

25 (i) attained the highest ranking or the highest letter and numerical
26 rating of a nationally recognized statistical rating organization; or

27 (ii) retained an investment advisor registered or exempt from
28 registration with the Securities and Exchange Commission pursuant to
29 the "Investment Advisers Act of 1940," 15 U.S.C. §80b-1 et seq., with
30 experience investing in U.S. Government securities for at least the
31 most recent past 60 months and with assets under management in
32 excess of \$500 million⁴ ³; and

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

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

40 (a) which is managed in accordance with 17 C.F.R. ³[§270.2a7]
41 §270.2a-7³;

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

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

1 such U.S. Government securities;

2 (d) which is in compliance with rules adopted pursuant to the
 3 "Administrative Procedure Act," P.L.1968, ³[c.412] c.410³ (C.52:14B-
 4 1 et seq.) by the Local Finance Board of the Division of Local
 5 ³[Finance] Government Services³ in the Department of Community
 6 Affairs, which rules shall provide for disclosure and reporting
 7 requirements, and other provisions deemed necessary by the board to
 8 provide for the safety, liquidity and yield of the investments; ⁴[and]⁴

9 (e) which does not permit investments in instruments that: are
 10 subject to high price volatility with changing market conditions;
 11 cannot reasonably be expected, at the time of interest rate adjustment,
 12 to have a market value that approximates ³[its] their³ par value; or
 13 utilize an index that does not support a stable net asset value ⁴; and

14 (f) which purchases and redeems investments directly from the
 15 issuer, a government money market mutual fund, or the State of New
 16 Jersey Cash Management Fund, or through the use of a national or
 17 State bank located within this State, or through a broker-dealer which,
 18 at the time of purchase or redemption, has been registered
 19 continuously for a period of at least two years pursuant to section 9 of
 20 P.L.1967, c.93 (C.49:3-56) and has at least \$25 million in capital stock
 21 (or equivalent capitalization if not a corporation), surplus reserves for
 22 contingencies and undivided profits, or through a securities dealer who
 23 makes primary markets in U.S. Government securities and reports
 24 daily to the Federal Reserve Bank of New York its position in and
 25 borrowing on such U.S. Government securities⁴ .¹

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

30

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

32 40A:5-14. a. Each local unit shall adopt a cash management plan
 33 and shall deposit its funds pursuant to that plan. The cash
 34 management plan shall include ³;

35 (1)³ the designation of a ³public³ depository or depositories as
 36 defined in section 1 of P.L.1970, c.236 (C.17:9-41) ³[, designation of
 37 any fund that meets the requirements established pursuant to section
 38 8 of P.L.1977, c.396 (C.40A:5-15.1), or authorization for investments
 39 in other investment instruments as permitted pursuant to law, or any
 40 combination of the previously permitted designations or
 41 authorization.]³ and may permit deposits in such ³public³ depository
 42 or depositories as permitted in section 4 of P.L.1970, c.236
 43 (C.17:9-44) ³;

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

46 (3) the authorization for investments in other investment

- 1 instruments as permitted by law; or
2 (4) any combination of the designations or authorizations permitted
3 pursuant to this subsection a³. [In lieu of designating a depository or
4 in addition to the designation, the cash management plan may provide
5 that the local unit make deposits with the State of New Jersey Cash
6 Management Fund established pursuant to section 1 of P.L.1977,
7 c.281 (C.52:18A-90.4).]
- 8 b. The cash management plan shall be approved annually by
9 majority vote of the governing body of the local unit and may be
10 modified from time to time in order to reflect changes in federal or
11 State law or regulations, or in the designations of depositories³,
12 funds³ or investment instruments. The chief financial officer of the
13 local unit shall be charged with administering the plan.
- 14 c. The cash management plan shall be designed to assure to the
15 extent practicable the investment of local funds in interest bearing
16 accounts and [may be modified from time to time in order to reflect
17 changes in federal or state law or regulations] other permitted
18 investments. The cash management plan shall be subject to the annual
19 audit conducted pursuant to N.J.S.40A:5-4. When an investment in
20 bonds maturing in more than one year is authorized, the maturity of
21 ³[such] those³ bonds ³[must] shall³ approximate the prospective use
22 of the funds invested.
- 23 d. The cash management plan may include authorization to invest
24 in any of the investments authorized pursuant to ³section 8 of³
25 P.L.1977, c.396 (C.40A:5-15.1) and shall set policies for selecting and
26 evaluating investment instruments accordingly. Such policies shall
27 consider preservation of capital, liquidity, current and historical
28 investment returns, diversification, maturity requirements, costs and
29 fees, and when appropriate, policies of investment instrument
30 administrators. Policies shall be based on a cash flow analysis
31 prepared by the chief financial officer and be commensurate with the
32 nature and size of the funds held by the local unit. All investments
33 shall be made on a competitive basis insofar as practicable.
- 34 e. The cash management plan shall require a monthly report to the
35 governing body summarizing all investments made or redeemed since
36 the last meeting. The report shall set forth each organization holding
37 local unit funds, the amount of securities purchased or sold, class or
38 type of securities purchased, book value, earned income, fees incurred,
39 and market value of all investments as of the report date and other
40 information that may be required by the governing body.
- 41 f. The official charged with the custody of moneys of a local unit
42 shall deposit or invest them as designated by the cash management
43 plan and shall thereafter be relieved of any liability for loss of such
44 moneys due to the insolvency or closing of any depository or fund
45 designated in the cash management plan.
- 46 g. Any official involved in the ³[naming] designation³ of

1 depositories or government money market mutual funds, ³or in the
 2 authorization for investment in other investment instruments, or any
 3 combination of the preceding, ³ pursuant to subsection a. of this
 4 section, or ³the ³ selection of an entity seeking to sell an investment to
 5 the local unit who has a material business or personal relationship with
 6 that organization shall disclose that relationship to the governing body
 7 of the local unit and to the Local ³[Government Ethics] Finance³
 8 Board ³or a county or municipal ethics board, as appropriate ³ .

9 h. The registered principal of any security brokerage firm selling
 10 securities to the local unit shall be provided with, and sign an
 11 acknowledgment that the principal has seen and reviewed the local
 12 unit's cash management plan, and ³[certifies] ³ that the firm ³[has
 13 implemented controls against] shall not execute transactions resulting
 14 in ³ investments that are ³[contrary to] ³ not authorized under ³ the local
 15 unit's cash management plan or State law ⁴ . except that if the
 16 registered principal of any security brokerage firm selling securities to
 17 the local unit is only selling securities of a government money market
 18 mutual fund, the registered principal shall be provided with and sign
 19 an acknowledgement that the government money market mutual fund
 20 whose securities are being sold to the local unit meets the criteria of
 21 a government money market mutual fund as set forth in paragraph (1)
 22 of subsection e. of section 8 of P.L.1977, c.396 (C.40A:5-15.1) and
 23 has been so designated in the local unit's cash management plan ⁴ . ¹
 24 (cf: P.L.1983, c.8, s.2)

25

26 ¹[2.] ^{3.1} Section 8 of P.L.1977, c.396 (C.40A:5-15.1) is amended
 27 to read as follows:

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

29 ¹a. ¹ When authorized by ¹[resolution adopted by a majority vote
 30 of all its members, the governing body of] a cash management plan
 31 approved pursuant to N.J.S.40A:5-14, ¹ any local unit may use moneys
 32 which may be in hand for the purchase of the following types of
 33 securities which, if suitable for registry, may be registered in the name
 34 of the local unit:

35 ¹[a.] ⁽¹⁾ ¹ Bonds or other obligations of the United States of
 36 America or obligations guaranteed by the United States of America ¹[],
 37 including securities of, or other interests in, any open-end or
 38 closed-end management type investment company or investment trust
 39 registered under the "Investment Company Act of 1940," 54 Stat.
 40 ^[847] ⁷⁸⁹ (15 U.S.C.§80a-1 et seq.), purchased and redeemed only
 41 through the use of National or State banks located within this State or
 42 other financial intermediaries registered pursuant to section 9 of
 43 P.L.1967, c.93 (C.49:3-56), if the portfolio of that investment
 44 company or investment trust is limited to bonds or other obligations
 45 of the United States of America, bonds or other obligations guaranteed
 46 by the United States of America and repurchase agreements fully

1 collateralized by bonds or other obligations of the United States of
2 America or bonds or other obligations guaranteed by the United States
3 of America, which collateral shall be delivered to or held by the
4 investment company or investment trust, either directly or through an
5 authorized custodian;

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

10 c.];

11 (2) Government money market mutual funds;

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

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

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

25 ¹(6) Local government investment pools;

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

29 (8) Agreements for the repurchase of fully collateralized
30 securities, ³[where] if³;

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

33 (b) the custody of collateral is transferred to a third party;

34 (c) the maturity of the agreement is not more ³[that] than³ 30
35 days;

36 (d) the underlying securities are purchased through a public
37 depository as defined in section 1 of P.L.1970, c.236 (C.17:9-41); and

38 (e) a master repurchase agreement providing for the custody and
39 security of collateral is executed.

40 b. Any investment instruments ³[where] in which³ the security is
41 not physically held by the local unit shall be covered by a third party
42 custodial agreement which shall provide for the designation of such
43 investments in the name of the local unit and ³[have such safeguards
44 to]³ prevent unauthorized use of such investments.

45 c. Purchase of investment securities shall be executed by the
46 "delivery versus payment" method to ensure that securities are

1 ²[deposited in the financial institution] either received by the local unit
2 or a third party custodian² prior to ²or upon² the release of the local
3 unit's funds.

4 d. Any investments not purchased and redeemed directly from the
5 issuer, ³government money market mutual fund, local government
6 investment pool, or the State of New Jersey Cash Management Fund,³
7 shall be purchased and redeemed through the use of a national or State
8 bank located within this State or ³[other financial intermediary]
9 through a broker-dealer which, at the time of purchase or redemption,
10 has been ³registered ³continuously for a period of at least two years³
11 pursuant to section 9 of P.L.1967, c.93 (C.49:3-56) ³and has at least
12 \$25 million in capital stock (or equivalent capitalization if not a
13 corporation), surplus reserves for contingencies and undivided profits³
14 ⁴, or through a securities dealer who makes primary markets in U.S.
15 Government securities and reports daily to the Federal Reserve Bank
16 of New York its position in and borrowing on such U.S. Government
17 securities⁴ .

18 e. For the purposes of this section:

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

20 (a) of]² an investment company or investment trust ²[,] :

21 (a)² which ²[company or trust]² is registered with the Securities
22 and Exchange Commission under the "Investment Company Act of
23 1940," 15 U.S.C. §80a-1 et seq., and ²[which fund is]² operated in
24 accordance with 17 C.F.R. §270.2a-7;

25 (b) the portfolio of which is limited to U.S. Government securities
26 that meet the definition of an eligible security pursuant to 17 C.F.R.
27 §270.2a-7 and repurchase agreements that are collateralized by such
28 U.S. Government securities; ²[and]² ³and³

29 (c) which ⁴[is rated ³[in the highest category]³ by a nationally
30 recognized statistical rating organization] has:

31 (i) attained the highest ranking or the highest letter and numerical
32 rating of a nationally recognized statistical rating organization; or

33 (ii) retained an investment advisor registered or exempt from
34 registration with the Securities and Exchange Commission pursuant to
35 the "Investment Advisers Act of 1940," 15 U.S.C. §80b-1 et seq., with
36 experience investing in U.S. Government securities for at least the
37 most recent past 60 months and with assets under management in
38 excess of \$500 million⁴ ³[: and

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

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

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

1 §270.2a-7³;

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

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

8 (d) which is in compliance with rules adopted pursuant to the
9 "Administrative Procedure Act," P.L.1968,³[c.412] c.410³
10 (C.52:14B-1 et seq.) by the Local Finance Board of the Division of
11 Local³[Finance] Government Services³ in the Department of
12 Community Affairs, which rules shall provide for disclosure and
13 reporting requirements, and other provisions deemed necessary by the
14 board to provide for the safety, liquidity and yield of the investments;
15 ⁴[and]⁴

16 (e) which does not permit investments in instruments that: are
17 subject to high price volatility with changing market conditions;
18 cannot reasonably be expected, at the time of interest rate adjustment,
19 to have a market value that approximates³[its] their³ par value; or
20 utilize an index that does not support a stable net asset value⁴; and

21 (f) which purchases and redeems investments directly from the
22 issuer, government money market mutual fund, or the State of New
23 Jersey Cash Management Fund, or through the use of a national or
24 State bank located within this State, or through a broker-dealer which,
25 at the time of purchase or redemption, has been registered
26 continuously for a period of at least two years pursuant to section 9 of
27 P.L.1967, c.93 (C.49:3-56) and has at least \$25 million in capital stock
28 (or equivalent capitalization if not a corporation), surplus reserves for
29 contingencies and undivided profits, or through a securities dealer who
30 makes primary markets in U.S. Government securities and reports
31 daily to the Federal Reserve Bank of New York its position in and
32 borrowing on such U.S. Government securities⁴ .¹

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

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

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

2

3

4

5

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