

P.L. 1997, CHAPTER 148, *approved June 30, 1997*
Assembly, No. 832 (*Sixth Reprint*)

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

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.

⁵ Senate floor amendments adopted March 24, 1997.

⁶ Assembly amendments adopted in accordance with Governor's recommendations June 23, 1997.

1 of America, which collateral shall be delivered to or held by the
2 investment company or investment trust, either directly or through an
3 authorized custodian;

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

8 c.]:

9 (2) Government money market mutual funds;

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

15 (4)¹ Bonds or other obligations of the school district ¹[.] or bonds
16 or other obligations of the local unit or units within which the school
17 district is located;

18 (5) Bonds or other obligations, having a maturity date of not more
19 than ²[12 months] 397 days² from the date of purchase, approved by
20 the Division of Investment in the Department of the Treasury for
21 investment by ²[local units] school districts²;

22 (6) Local government investment pools;

23 (7) Deposits with the State of New Jersey Cash Management Fund
24 established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4
25 ³[et seq.]³); or

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

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

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

31 (c) the maturity of the agreement is ³[no] not³ more than 30 days;

32 (d) the underlying securities are purchased through a public
33 depository as defined in section 1 of P.L.1970, c.236 (C.17:9-41) and
34 for which a master repurchase agreement providing for the custody
35 and security of collateral is executed.

36 b. Any investment instruments ³[where] in which³ the security is
37 not physically held by the school district shall be covered by a third
38 party custodial agreement which shall provide for the designation of
39 such investments in the name of the school board and ³[have such
40 safeguards to]³ prevent unauthorized use of such investments.

41 c. Purchase of investment securities shall be executed by the
42 "delivery versus payment" method to ensure that securities are
43 ²[deposited in the financial institution] either received by the school
44 district or a third party custodian² prior to ²or upon² the release of the
45 school district's funds.

46 d. Any investments not purchased and redeemed directly from the

1 issuer, ³government money market mutual fund, local government
 2 investment pool, or the State of New Jersey Cash Management Fund.³
 3 shall be purchased and redeemed through the use of a national or State
 4 bank located within this State or ³[other financial intermediary]
 5 through a broker-dealer which, at the time of purchase or redemption,
 6 has been³ registered ³continuously for a period of at least two years³
 7 pursuant to section 9 of P.L.1967, c.93 (C.49:3-56) ³and has at least
 8 \$25 million in capital stock (or equivalent capitalization if not a
 9 corporation), surplus reserves for contingencies and undivided profits³
 10 ⁴, or through a securities dealer who makes primary markets in U.S.
 11 Government securities and reports daily to the Federal Reserve Bank
 12 of New York its position in and borrowing on such U.S. Government
 13 securities⁴.

14 e. For the purposes of this section:

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

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

17 (a)² which ²[company or trust]² is registered with the Securities and
 18 Exchange Commission under the "Investment Company Act of 1940,"
 19 15 U.S.C. §80a-1 et seq., and ²[which fund is]² operated in accordance
 20 with 17 C.F.R. §270.2a-7;

21 (b) the portfolio of which is limited to U.S. Government securities
 22 that meet the definition of an eligible security pursuant to 17
 23 C.F.R. §270.2a-7 and repurchase agreements that are collateralized by
 24 such U.S. Government securities ⁶in which direct investment may be
 25 made pursuant to paragraphs (1) and (3) of subsection (a) of this
 26 section⁶ ; ³and³

27 (c) which ⁶is rated by a nationally recognized statistical rating
 28 organization.⁶ ⁴[is rated ³[in the highest category]³ by a nationally
 29 recognized statistical rating organization] ⁶[has:

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

32 (ii) retained an investment advisor registered or exempt from
 33 registration with the Securities and Exchange Commission pursuant to
 34 the "Investment Advisers Act of 1940," 15 U.S.C. §80b-1 et seq., with
 35 experience investing in U.S. Government securities for at least the
 36 most recent past 60 months and with assets under management in
 37 excess of \$500 million⁴]⁶ ³[; and

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

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

45 (a) which is managed in accordance with 17 C.F.R. ³[§270.2a7]
 46 §270.2a-7³;

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

3 (c) the portfolio of which is limited to U.S. Government securities
 4 that meet the definition of an eligible security pursuant to 17
 5 C.F.R. §270.2a-7 and repurchase agreements that are collateralized by
 6 such U.S. Government securities ⁶in which direct investment may be
 7 made pursuant to paragraphs (1) and (3) of subsection (a) of this
 8 section⁶;

9 (d) which is in compliance with rules adopted pursuant to the
 10 "Administrative Procedure Act," P.L.1968, ³[c.412] c.410³ (C.52:14B-
 11 1 et seq.) by the Local Finance Board of the Division of Local
 12 ³[Finance] Government Services³ in the Department of Community
 13 Affairs, which rules shall provide for disclosure and reporting
 14 requirements, and other provisions deemed necessary by the board to
 15 provide for the safety, liquidity and yield of the investments; 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 approximates ³[its] their³ par value; or
 20 utilize an index that does not support a stable net asset value ⁴; and

21 (f) which purchases and redeems investments directly from the
 22 issuer, a 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 instruments
 34 made pursuant to this section shall not be subject to the requirements
 35 of the "Public School Contracts Law," N.J.S.18A:18A-1 et seq.²

36 (cf: P.L.1991, c.458, s.1)

37
 38 ¹2. N.J.S.40A:5-14 is amended to read as follows:

39 40A:5-14. a. Each local unit shall adopt a cash management plan
 40 and shall deposit ⁵, or invest, or both deposit and invest, ⁵ its funds
 41 pursuant to that plan. The cash management plan shall include ³;

42 (1)³ the designation of a ³public³ depository or depositories as
 43 defined in section 1 of P.L.1970, c.236 (C.17:9-41) ³[, designation of
 44 any fund that meets the requirements established pursuant to section
 45 8 of P.L.1977, c.396 (C.40A:5-15.1), or authorization for investments
 46 in other investment instruments as permitted pursuant to law, or any

1 combination of the previously permitted designations or
2 authorization.]³ and may permit deposits in such ³public³ depository
3 or depositories as permitted in section 4 of P.L.1970, c.236
4 (C.17:9-44)³;

5 (2) ⁶the designation of any fund that meets the requirements
6 established pursuant to section 8 of P.L.1977, c.396 (C.40A:5-15.1)
7 and⁶ ⁵[the designation of any fund that meets the requirements
8 established pursuant to section 8 of P.L.1977, c.396 (C.40A:5-15.1);

9 (3)]⁵ the authorization for investments ⁵[in other investment
10 instruments]⁵ as permitted ⁵[by law] pursuant to section 8 of
11 P.L.1977, c.396 (C.40A:5-15.1)⁵; or

12 ⁵[(4)] (3)⁵ any combination of the designations or authorizations
13 permitted pursuant to this subsection a³. [In lieu of designating a
14 depository or in addition to the designation, the cash management plan
15 may provide that the local unit make deposits with the State of New
16 Jersey Cash Management Fund established pursuant to section 1 of
17 P.L.1977, c.281 (C.52:18A-90.4).]

18 b. The cash management plan shall be approved annually by
19 majority vote of the governing body of the local unit and may be
20 modified from time to time in order to reflect changes in federal or
21 State law or regulations, or in the designations of depositories ⁶, funds
22 or investment instruments⁶ ⁵[³, funds³ or investment instruments] or
23 the authorization for investments⁵. The chief financial officer of the
24 local unit shall be charged with administering the plan.

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

34 d. The cash management plan may include authorization to invest
35 in any of the investments authorized pursuant to ³section 8 of³
36 P.L.1977, c.396 (C.40A:5-15.1) and shall set policies for selecting and
37 evaluating investment instruments accordingly. Such policies shall
38 consider preservation of capital, liquidity, current and historical
39 investment returns, diversification, maturity requirements, costs and
40 fees, and when appropriate, policies of investment instrument
41 administrators. Policies shall be based on a cash flow analysis
42 prepared by the chief financial officer and be commensurate with the
43 nature and size of the funds held by the local unit. All investments
44 shall be made on a competitive basis insofar as practicable.

45 e. The cash management plan shall require a monthly report to the
46 governing body summarizing all investments made or redeemed since

1 the last meeting. The report shall set forth each organization holding
2 local unit funds, the amount of securities purchased or sold, class or
3 type of securities purchased, book value, earned income, fees incurred,
4 and market value of all investments as of the report date and other
5 information that may be required by the governing body.

6 f. The official charged with the custody of moneys of a local unit
7 shall deposit or invest them as designated ⁵or authorized⁵ by the cash
8 management plan ⁵pursuant to subsection a. of this section⁵ and shall
9 thereafter be relieved of any liability for loss of such moneys due to the
10 insolvency or closing of any depository ⁵[or fund]⁵ designated ⁵[in]
11 by, or the decrease in value of any investment authorized by,⁵ the cash
12 management plan ⁵pursuant to subsection a. of this section⁵.

13 g. Any official involved in the ³[naming] designation³ of
14 depositories ⁵[or government money market mutual funds,]⁵ ³or in the
15 authorization for ⁵[investment in other investment instruments]
16 investments as permitted pursuant to section 8 of P.L.1977, c.396
17 (C.40A:5-15.1)⁵, or any combination of the preceding,³ ⁵[pursuant to
18 subsection a. of this section,]⁵ or ³the³ selection of an entity seeking
19 to sell an investment to the local unit who has a material business or
20 personal relationship with that organization shall disclose that
21 relationship to the governing body of the local unit and to the Local
22 ³[Government Ethics] Finance³ Board³ or a county or municipal ethics
23 board, as appropriate³.

24 h. The registered principal of any security brokerage firm selling
25 securities to the local unit shall be provided with, and sign an
26 acknowledgment that the principal has seen and reviewed the local
27 unit's cash management plan ⁵[, and ³[certifies]³ that the firm³ [has
28 implemented controls against] shall not execute transactions resulting
29 in³ investments that are ³[contrary to]³ not authorized under³ the local
30 unit's cash management plan or State law]⁵ ⁴. except that ⁵[if the
31 registered principal of any security brokerage firm selling securities to
32 the local unit is only selling securities of] with respect to the sale of⁵
33 a government money market mutual fund, the registered principal
34 ⁵[shall] need only⁵ be provided with and sign an acknowledgement
35 that the government money market mutual fund whose securities are
36 being sold to the local unit meets the criteria of a government money
37 market mutual fund as set forth in paragraph (1) of subsection e. of
38 section 8 of P.L.1977, c.396 (C.40A:5-15.1) ⁵[and has been so
39 designated in the local unit's cash management plan ⁴]⁵ .¹

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

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

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

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

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

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

31 c.];

32 (2) Government money market mutual funds;

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

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

42 d.] (5)¹ Bonds or other obligations, having a maturity date not
43 more than ²[12 months] 397 days ² from the date of purchase,
44 approved by the Division of Investment of the Department of the
45 Treasury for investment by local units ³[.] ³

46 ¹(6) Local government investment pools;

- 1 (7) Deposits with the State of New Jersey Cash Management Fund
2 established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4);
3 or
4 (8) Agreements for the repurchase of fully collateralized
5 securities, ³[where] if³:
6 (a) the underlying securities are permitted investments pursuant to
7 paragraphs (1) and (3) of this subsection a.;
8 (b) the custody of collateral is transferred to a third party;
9 (c) the maturity of the agreement is not more ³[that] than³ 30
10 days;
11 (d) the underlying securities are purchased through a public
12 depository as defined in section 1 of P.L.1970, c.236 (C.17:9-41); and
13 (e) a master repurchase agreement providing for the custody and
14 security of collateral is executed.
15 b. Any investment instruments ³[where] in which³ the security is
16 not physically held by the local unit shall be covered by a third party
17 custodial agreement which shall provide for the designation of such
18 investments in the name of the local unit and ³[have such safeguards
19 to]³ prevent unauthorized use of such investments.
20 c. Purchase of investment securities shall be executed by the
21 "delivery versus payment" method to ensure that securities are
22 ²[deposited in the financial institution] either received by the local unit
23 or a third party custodian² prior to ²or upon² the release of the local
24 unit's funds.
25 d. Any investments not purchased and redeemed directly from the
26 issuer, ³government money market mutual fund, local government
27 investment pool, or the State of New Jersey Cash Management Fund,³
28 shall be purchased and redeemed through the use of a national or State
29 bank located within this State or ³[other financial intermediary]
30 through a broker-dealer which, at the time of purchase or redemption,
31 has been ³registered ³continuously for a period of at least two years³
32 pursuant to section 9 of P.L.1967, c.93 (C.49:3-56) ³and has at least
33 \$25 million in capital stock (or equivalent capitalization if not a
34 corporation), surplus reserves for contingencies and undivided profits³
35 ⁴, or through a securities dealer who makes primary markets in U.S.
36 Government securities and reports daily to the Federal Reserve Bank
37 of New York its position in and borrowing on such U.S. Government
38 securities⁴ .
39 e. For the purposes of this section:
40 (1) a "government money market mutual fund" means ²[a fund:
41 (a) of]² an investment company or investment trust ²[,] :
42 (a)² which ²[company or trust]² is registered with the Securities
43 and Exchange Commission under the "Investment Company Act of
44 1940," 15 U.S.C. §80a-1 et seq., and ²[which fund is]² operated in
45 accordance with 17 C.F.R. §270.2a-7;
46 (b) the portfolio of which is limited to U.S. Government securities

1 that meet the definition of an eligible security pursuant to 17 C.F.R.
 2 §270.2a-7 and repurchase agreements that are collateralized by such
 3 U.S. Government securities ⁶in which direct investment may be made
 4 pursuant to paragraphs (1) and (3) of subsection (a) of this section⁶;
 5 ²[and]² ³and³

6 (c) which ⁶is rated by a nationally recognized statistical rating
 7 organization.⁶ ⁴[is rated ³[in the highest category]³ by a nationally
 8 recognized statistical rating organization] ⁶[has:

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

11 (ii) retained an investment advisor registered or exempt from
 12 registration with the Securities and Exchange Commission pursuant to
 13 the "Investment Advisers Act of 1940," 15 U.S.C. §80b-1 et seq., with
 14 experience investing in U.S. Government securities for at least the
 15 most recent past 60 months and with assets under management in
 16 excess of \$500 million⁴]⁶ ³[: and

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

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

24 (a) which is managed in accordance with 17 C.F.R. ³[§270.2a7]
 25 §270.2a-7]³;

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

28 (c) which is limited to U.S. Government securities that meet the
 29 definition of an eligible security pursuant to 17 C.F.R. §270.2a-7 and
 30 repurchase agreements that are collateralized by such U.S.
 31 Government securities ⁶in which direct investment may be made
 32 pursuant to paragraphs (1) and (3) of subsection (a) of this section⁶;

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

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

46 (f) which purchases and redeems investments directly from the

1 issuer, government money market mutual fund, or the State of New
2 Jersey Cash Management Fund, or through the use of a national or
3 State bank located within this State, or through a broker-dealer which,
4 at the time of purchase or redemption, has been registered
5 continuously for a period of at least two years pursuant to section 9 of
6 P.L.1967, c.93 (C.49:3-56) and has at least \$25 million in capital stock
7 (or equivalent capitalization if not a corporation), surplus reserves for
8 contingencies and undivided profits, or through a securities dealer who
9 makes primary markets in U.S. Government securities and reports
10 daily to the Federal Reserve Bank of New York its position in and
11 borrowing on such U.S. Government securities⁴ .¹

12 ²f. Investments in, or deposits or purchases of financial
13 instruments made pursuant to this section shall not be subject to the
14 requirements of the "Local Public Contracts Law," P.L.1971, c.198
15 (C.40A:11-1 et seq.).²
16 (cf: P.L.1991, c.458, s.2)

17

18 ¹[3.] 4.¹ This act shall take effect immediately.

19

20

21

22

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