

[Second Reprint]  
SENATE, No. 1413

STATE OF NEW JERSEY

INTRODUCED JULY 25, 1996

By Senator BENNETT

1 AN ACT concerning investments of boards of education and local units  
2 and amending various parts of the statutory law.

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

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

29 b. Bonds of any Federal Intermediate Credit Bank, Federal Home  
30 Loan Bank, Federal Land Bank, Federal National Mortgage Associates  
31 or of any United States Bank for Cooperatives which have a maturity

**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:**

<sup>1</sup> Senate SSG committee amendments adopted November 18, 1996.

<sup>2</sup> Senate SBA committee amendments adopted December 16, 1996.

1 date not greater than 12 months from the date of purchase; or  
2 c.];

3 (2) Government money market mutual funds;  
4 (3) Any obligation that a federal agency or a federal instrumentality  
5 has issued in accordance with an act of Congress, which security has  
6 a maturity date not greater than 397 days from the date of purchase,  
7 provided that such obligations bear a fixed rate of interest not  
8 dependent on any index or other external factor;

9 (4) Bonds or other obligations of the school district [.] or bonds  
10 or other obligations of the local unit or units within which the school  
11 district is located;

12 (5) Bonds or other obligations, having a maturity date of not more  
13 than 397 days from the date of purchase, approved by the Division of  
14 Investment in the Department of the Treasury for investment by school  
15 districts;

16 (6) Local government investment pools;

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

20 (8) Agreements for the repurchase of fully collateralized securities,  
21 if:

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

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

25 (c) the maturity of the agreement is <sup>1</sup>[no] not<sup>1</sup> more than 30 days;

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

30 b. Any investment instruments in which the security is not  
31 physically held by the school district shall be covered by a third party  
32 custodial agreement which shall provide for the designation of such  
33 investments in the name of the school board and prevent unauthorized  
34 use of such investments.

35 c. Purchase of investment securities shall be executed by the  
36 "delivery versus payment" method to ensure that securities are either  
37 received by the school district or a third party custodian prior to or  
38 upon the release of the school district's funds.

39 d. Any investments not purchased and redeemed directly from the  
40 issuer <sup>1</sup>, government money market mutual fund, local government  
41 investment pool, or the State of New Jersey Cash Management Fund,<sup>1</sup>  
42 shall be purchased and redeemed through the use of a national or  
43 State bank located within this State or through a broker-dealer which,  
44 at the time of purchase or redemption, has been registered  
45 continuously for a period of at least two years pursuant to section 9 of  
46 P.L.1967, c.93 (C.49:3-56) and has at least \$25 million in capital stock

1 (or equivalent capitalization if not a corporation), surplus reserves for  
2 contingencies and undivided profits <sup>2</sup>, or through a securities dealer  
3 who makes primary markets in U.S. Government securities and reports  
4 daily to the Federal Reserve Bank of New York its position in and  
5 borrowing on such U.S. Government securities<sup>2</sup> .

6 e. For the purposes of this section:

7 (1) a "government money market mutual fund" means an  
8 investment company or investment trust:

9 (a) which is registered with the Securities and Exchange  
10 Commission under the "Investment Company Act of 1940," 15 U.S.C.  
11 §80a-1 et seq., and operated in accordance with 17 C.F.R. §270.2a-7;

12 (b) the portfolio of which is limited to U.S. Government securities  
13 that meet the definition of an eligible security pursuant to 17 C.F.R.  
14 §270.2a-7 and repurchase agreements that are collateralized by such  
15 U.S. Government securities; <sup>1</sup>and<sup>1</sup>

16 (c) which <sup>2</sup>[is rated <sup>1</sup>[in the highest category] <sup>1</sup>by a nationally

17 recognized statistical rating organization] has:

18 (i) attained the highest ranking or the highest letter and  
19 numerical rating of a nationally recognized statistical rating  
20 organization; or

21 (ii) retained an investment advisor registered or exempt from  
22 registration with the Securities and Exchange Commission pursuant to  
23 the "Investment Advisers Act of 1940," 15 U.S.C. §80b-1 et seq., with  
24 experience investing in U.S. Government securities for at least the  
25 most recent past 60 months and with assets under management in  
26 excess of \$500 million<sup>2</sup> <sup>1</sup>[: and

27 (d) which does not permit investments in instruments that: are  
28 subject to high price volatility with changing market conditions; cannot  
29 reasonably be expected, at the time of interest rate adjustment, to have  
30 a market value that approximates their par value; or utilize an index  
31 that does not support a stable net asset value]<sup>1</sup>.

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

34 (a) which is managed in accordance with 17 C.F.R. <sup>1</sup>[§270.2a7]  
35 §270.2a-7<sup>1</sup>;

36 (b) which is rated in the highest category by a nationally  
37 recognized statistical rating organization; <sup>1</sup>[and]<sup>1</sup>

38 (c) the portfolio of which is limited to U.S. Government securities  
39 that meet the definition of an eligible security pursuant to 17 C.F.R.  
40 §270.2a-7 and repurchase agreements that are collateralized by such  
41 U.S. Government securities;

42 (d) which is in compliance with rules adopted pursuant to the  
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)  
44 by the Local Finance Board of the Division of Local Government  
45 Services in the Department of Community Affairs, which rules shall  
46 provide for disclosure and reporting requirements, and other

1 provisions deemed necessary by the board to provide for the safety,  
 2 liquidity and yield of the investments; <sup>2</sup>[and]<sup>2</sup>

3 (e) which does not permit investments in instruments that: are  
 4 subject to high price volatility with changing market conditions;  
 5 cannot reasonably be expected, at the time of interest rate adjustment,  
 6 to have a market value that approximates <sup>1</sup>[its] their<sup>1</sup> par value; or  
 7 utilize an index that does not support a stable net asset value <sup>2</sup>; and

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

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

24  
 25 2. N.J.S.40A:5-14 is amended to read as follows:

26 40A:5-14. a. Each local unit shall adopt a cash management plan  
 27 and shall deposit its funds pursuant to that plan. The cash  
 28 management plan shall include :

29 (1) the designation of a public depository or depositories as  
 30 defined in section 1 of P.L.1970, c.236 (C.17:9-41) and may permit  
 31 deposits in such public depository or depositories as permitted in  
 32 section 4 of P.L.1970, c.236 (C.17:9-44) ;

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

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

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

43 b. The cash management plan shall be approved annually by  
 44 majority vote of the governing body of the local unit and may be  
 45 modified from time to time in order to reflect changes in federal or  
 46 State law or regulations, or in the designations of depositories, funds

1 or investment instruments. The chief financial officer of the local unit  
2 shall be charged with administering the plan.

3 c. The cash management plan shall be designed to assure to the  
4 extent practicable the investment of local funds in interest bearing  
5 accounts and [may be modified from time to time in order to reflect  
6 changes in federal or State law or regulations] other permitted  
7 investments. The cash management plan shall be subject to the annual  
8 audit conducted pursuant to N.J.S.40A:5-4. When an investment in  
9 bonds maturing in more than one year is authorized, the maturity of  
10 those bonds shall approximate the prospective use of the funds  
11 invested.

12 d. The cash management plan may include authorization to invest  
13 in any of the investments authorized pursuant to section 8 of P.L.1977,  
14 c.396 (C.40A:5-15.1) and shall set policies for selecting and evaluating  
15 investment instruments accordingly. Such policies shall consider  
16 preservation of capital, liquidity, current and historical investment  
17 returns, diversification, maturity requirements, costs and fees, and  
18 when appropriate, policies of investment instrument administrators.  
19 Policies shall be based on a cash flow analysis prepared by the chief  
20 financial officer and be commensurate with the nature and size of the  
21 funds held by the local unit. All investments shall be made on a  
22 competitive basis insofar as practicable.

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

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

35 g. Any official involved in the designation of depositories or  
36 government money market mutual funds, or in the authorization for  
37 investment in other investment instruments, or any combination of the  
38 preceding, pursuant to subsection a. of this section, or the selection of  
39 an entity seeking to sell an investment to the local unit who has a  
40 material business or personal relationship with that organization shall  
41 disclose that relationship to the governing body of the local unit and  
42 to the Local Finance Board or a county or municipal ethics board, as  
43 appropriate.

44 h. The registered principal of any security brokerage firm selling  
45 securities to the local unit shall be provided with, and sign an  
46 acknowledgment that the principal has seen and reviewed the local

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

14  
15 3. Section 8 of P.L.1977, c.396 (C.40A:5-15.1) is amended to  
16 read as follows:

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

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

24 [a.] (1) Bonds or other obligations of the United States of  
25 America or obligations guaranteed by the United States of America [,  
26 including securities of, or other interests in, any open-end or  
27 closed-end management type investment company or investment trust  
28 registered under the "Investment Company Act of 1940," 54 Stat. 847  
29 (15 U.S.C.§80a-1 et seq.), purchased and redeemed only through the  
30 use of National or State banks located within this State, if the portfolio  
31 of that investment company or investment trust is limited to bonds or  
32 other obligations of the United States of America, bonds or other  
33 obligations guaranteed by the United States of America and repurchase  
34 agreements fully collateralized by bonds or other obligations of the  
35 United States of America or bonds or other obligations guaranteed by  
36 the United States of America, which collateral shall be delivered to or  
37 held by the investment company or investment trust, either directly or  
38 through an authorized custodian;

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

43 c.];

44 (2) Government money market mutual funds;

45 (3) Any obligation that a federal agency or a federal  
46 instrumentality has issued in accordance with an act of Congress,

1 which security has a maturity date not greater than 397 days from the  
2 date of purchase, provided that such obligation bears a fixed rate of  
3 interest not dependent on any index or other external factor<sup>1</sup> [.] ;<sup>1</sup>  
4 (4) Bonds or other obligations of the local unit or bonds or other  
5 obligations of school districts of which the local unit is a part or within  
6 which the school district is located; [or  
7 d.] (5) Bonds or other obligations, having a maturity date not  
8 more than [12 months] 397 days from the date of purchase, approved  
9 by the Division of Investment of the Department of the Treasury for  
10 investment by local units<sup>1</sup> [.] ;<sup>1</sup>  
11 (6) Local government investment pools;  
12 (7) Deposits with the State of New Jersey Cash Management Fund  
13 established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4);  
14 or  
15 (8) Agreements for the repurchase of fully collateralized  
16 securities, if:  
17 (a) the underlying securities are permitted investments pursuant to  
18 paragraphs (1) and (3) of this subsection a.;  
19 (b) the custody of collateral is transferred to a third party;  
20 (c) the maturity of the agreement is not more<sup>1</sup> [that] than<sup>1</sup> 30  
21 days;  
22 (d) the underlying securities are purchased through a public  
23 depository as defined in section 1 of P.L.1970, c.236 (C.17:9-41); and  
24 (e) a master repurchase agreement providing for the custody and  
25 security of collateral is executed.  
26 b. Any investment instruments in which the security is not  
27 physically held by the local unit shall be covered by a third party  
28 custodial agreement which shall provide for the designation of such  
29 investments in the name of the local unit and prevent unauthorized use  
30 of such investments.  
31 c. Purchase of investment securities shall be executed by the  
32 "delivery versus payment" method to ensure that securities are either  
33 received by the local unit or a third party custodian prior to or upon  
34 the release of the local unit's funds.  
35 d. Any investments not purchased and redeemed directly from the  
36 issuer<sup>1</sup>, government money market mutual fund, local government  
37 investment pool, or the State of New Jersey Cash Management Fund.<sup>1</sup>  
38 shall be purchased and redeemed through the use of a national or  
39 State bank located within this State or through a broker-dealer which,  
40 at the time of purchase or redemption, has been registered  
41 continuously for a period of at least two years pursuant to section 9 of  
42 P.L.1967, c.93 (C.49:3-56) and has at least \$25 million in capital stock  
43 (or equivalent capitalization if not a corporation), surplus reserves for  
44 contingencies and undivided profits<sup>2</sup>, or through a securities dealer  
45 who makes primary markets in U.S. Government securities and reports  
46 daily to the Federal Reserve Bank of New York its position in and

- 1 borrowing on such U.S. Government securities<sup>2</sup> .  
2 e. For the purposes of this section:  
3 (1) a "government money market mutual fund" means an  
4 investment company or investment trust:  
5 (a) which is registered with the Securities and Exchange  
6 Commission under the "Investment Company Act of 1940," 15 U.S.C.  
7 §80a-1 et seq., and operated in accordance with 17 C.F.R. §270.2a-7;  
8 (b) the portfolio of which is limited to U.S. Government securities  
9 that meet the definition of an eligible security pursuant to 17 C.F.R.  
10 §270.2a-7 and repurchase agreements that are collateralized by such  
11 U.S. Government securities; <sup>1</sup>and<sup>1</sup>  
12 (c) which <sup>2</sup>[is rated <sup>1</sup>[in the highest category]<sup>1</sup> by a nationally  
13 recognized statistical rating organization] has:  
14 (i) attained the highest ranking or the highest letter and  
15 numerical rating of a nationally recognized statistical rating  
16 organization; or  
17 (ii) retained an investment advisor registered or exempt from  
18 registration with the Securities and Exchange Commission pursuant to  
19 the "Investment Advisers Act of 1940," 15 U.S.C. §80b-1 et seq., with  
20 experience investing in U.S. Government securities for at least the  
21 most recent past 60 months and with assets under management in  
22 excess of \$500 million<sup>2</sup> <sup>1</sup>[: and  
23 (d) which does not permit investments in instruments that: are  
24 subject to high price volatility with changing market conditions; cannot  
25 reasonably be expected, at the time of interest rate adjustment, to have  
26 a market value that approximates their par value; or utilize an index  
27 that does not support a stable net asset value]<sup>1</sup> .  
28 (2) a "local government investment pool" means an investment  
29 pool:  
30 (a) which is managed in accordance with 17 C.F.R. <sup>1</sup>[§270.2a7]  
31 §270.2a-7<sup>1</sup>;  
32 (b) which is rated in the highest category by a nationally  
33 recognized statistical rating organization;  
34 (c) which is limited to U.S. Government securities that meet the  
35 definition of an eligible security pursuant to 17 C.F.R. §270.2a-7 and  
36 repurchase agreements that are collateralized by such U.S.  
37 Government securities;  
38 (d) which is in compliance with rules adopted pursuant to the  
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)  
40 by the Local Finance Board of the Division of Local Government  
41 Services in the Department of Community Affairs, which rules shall  
42 provide for disclosure and reporting requirements, and other  
43 provisions deemed necessary by the board to provide for the safety,  
44 liquidity and yield of the investments; <sup>2</sup>[and]<sup>2</sup>  
45 (e) which does not permit investments in instruments that: are  
46 subject to high price volatility with changing market conditions;

1 cannot reasonably be expected, at the time of interest rate adjustment,  
2 to have a market value that approximates <sup>1</sup>[its] <sup>1</sup>their<sup>1</sup> par value; or  
3 utilize an index that does not support a stable net asset value <sup>2</sup>; and  
4 (f) which purchases and redeems investments directly from the  
5 issuer, a government money market mutual fund, or the State of New  
6 Jersey Cash Management Fund, or through the use of a national or  
7 State bank located within this State, or through a broker-dealer which,  
8 at the time of purchase or redemption, has been registered  
9 continuously for a period of at least two years pursuant to section 9 of  
10 P.L.1967, c.93 (C.49:3-56) and has at least \$25 million in capital stock  
11 (or equivalent capitalization if not a corporation), surplus reserves for  
12 contingencies and undivided profits, or through a securities dealer who  
13 makes primary markets in U.S. Government securities and reports  
14 daily to the Federal Reserve Bank of New York its position in and  
15 borrowing on such U.S. Government securities<sup>2</sup>.

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

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

21

22 4. This act shall take effect immediately.

23

24

25

26

27 \_\_\_\_\_  
Allows school boards and local units to make certain investments.