

SENATE, No. 2046

STATE OF NEW JERSEY

INTRODUCED MAY 8, 1997

By Senator INVERSO

1 AN ACT concerning banks serving as custodians or fiscal agents of  
2 certain State assets and amending P.L.1977, c.281 and amending  
3 and supplementing P.L.1954, c.22.

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

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8 1. Section 1 of P.L.1954, c.22 (C.52:18A-8.1) is amended to read  
9 as follows:

10 1. a. The State Treasurer is hereby authorized and empowered to  
11 enter into agreement from time to time, and on [such] the terms and  
12 for [such] the compensation, if any, [as] the State Treasurer [may  
13 deem] deems appropriate, with any [1] one or more of the national  
14 banks [, the principal office of which is located in the State of New  
15 Jersey,] and the banks authorized by this State to carry on a banking  
16 business, which [he] the State Treasurer may select, to act as fiscal  
17 agent for the State or as custodian for funds, securities, or other assets  
18 of the State and as fiscal agent or as [such] custodian for any pension  
19 agency, fund or system maintained in whole or in part by the State.  
20 Each bank selected by the State Treasurer to act as custodian or fiscal  
21 agent shall have a physical presence in this State in the form of a  
22 principal office or branch office and shall employ New Jersey  
23 residents. Each bank selected by the State Treasurer may use  
24 recognized depositories or clearinghouses for the funds, securities or  
25 other assets of the State or may use other banks as sub-custodians or  
26 sub-fiscal agents for these assets, provided that in every case each  
27 bank selected by the State Treasurer shall retain primary responsibility  
28 for these assets.

29 b. If a bank selected by the State Treasurer delegates its  
30 responsibilities as custodian or fiscal agent, or both, to a sub-custodian  
31 or sub-fiscal agent, the sub-custodian or sub-fiscal agent shall be  
32 responsible for the services delegated to it to the same degree as the  
33 primary custodian or primary fiscal agent and shall maintain  
34 accounting records and be otherwise held accountable to the same

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.

1 degree of fiduciary duty and responsibility as the appointing primary  
2 custodian or fiscal agent.

3 c. A bank selected by the State Treasure as a primary custodian or  
4 fiscal agent which delegates its responsibilities as custodian or fiscal  
5 agent, or both, to a sub-custodian or sub-fiscal agent, shall not be  
6 relieved of its fiduciary duties and responsibilities.

7 (cf: P.L.1954, c.22, s.1)

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9 2. (New section) As used in Section 1 of P.L.1954, c.22  
10 (C.52:18A-8.1):

11 "Branch office" means an office at a fixed location other than a  
12 principal office, however designated, at which any business that may  
13 be conducted in a principal office of a bank may be transacted.

14 "Clearinghouse" means an association of banks or other payors  
15 regularly settling mutual claims, accounts and other items such as  
16 securities, payments and income.

17 "Custodian," "primary custodian," "fiscal agent" and "primary fiscal  
18 agent" means a bank which is selected by the State Treasurer to  
19 perform fiduciary functions in the maintenance of public trust funds  
20 and assets.

21 "Depository" means a separately incorporated bank or association  
22 of banks which serves as a temporary trustee for securities on behalf  
23 of a custodian, sub-custodian, fiscal agent or sub-fiscal agent.

24 "Principal office" means the headquarters of a bank which is its  
25 principal place of business.

26 "Sub-custodian" or "sub-fiscal agent" means a bank, located in any  
27 state or country, to which a primary custodian or primary fiscal agent  
28 may delegate its duties and responsibilities.

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30 3. Section 1 of P.L.1977, c.281 (C.52:18A-90.4) is amended to  
31 read as follows:

32 1. Notwithstanding the provisions of section 2 of P.L.1970, c. 270  
33 (C. 52:18A-90.2), the Director of the Division of Investment may,  
34 subject to the approval of the State Investment Council and the State  
35 Treasurer, establish, maintain and operate a common trust fund to be  
36 known as the State of New Jersey Cash Management Fund in which  
37 may be deposited the surplus public moneys of the State, its counties,  
38 municipalities and school districts and the agencies or authorities  
39 created by any of these entities. This fund shall be considered a legal  
40 depository for public moneys and shall satisfy the requirements in that  
41 regard of section 1 of P.L.1956, c. 174 (C. 52:18-16.1) and N.J.S.  
42 40A:5-14.

43 The State Treasurer shall be the custodian of the fund and may  
44 receive public moneys paid into the fund by any other custodian of  
45 public moneys for the purpose of holding and investing said moneys.  
46 In that capacity, he may enter into an agreement with [a bank or trust

1 company having its place of business within the State and organized  
2 under the laws of the United States or of] any one or more of the  
3 national banks and the banks authorized by this State to carry on a  
4 banking business, as he may select, for the custodianship of securities  
5 held in the fund and for recording the amounts deposited and  
6 withdrawn by each participant, the investment transactions entered  
7 into, and the balance to each participant's credit each day. A bank  
8 selected by the State Treasurer as custodian pursuant to this section  
9 shall have a physical presence in this State in the form of a principal  
10 office or branch office and shall employ New Jersey residents. The  
11 State Treasurer may promulgate such rules and regulations pursuant  
12 to the Administrative Procedure Act, P.L.1968, c. 410 (C. 52:14B-1  
13 et seq.), as he deems necessary for the efficient administration of the  
14 State of New Jersey Cash Management Fund, including but not limited  
15 to, (1) the specification of minimum amounts which may be deposited  
16 in the fund and minimum periods of time for which deposits shall be  
17 retained in the fund; (2) creation of a reserve for losses; (3) provision  
18 for payment of administration expenses from its earnings; and (4)  
19 distribution of the earnings in excess of such expenses or allocation of  
20 losses to the several participants in a manner which equitably reflects  
21 the differing amounts of their respective investments and the differing  
22 periods of time for which such amounts were in the custody of the  
23 fund.

24 The Director of the Division of Investment may invest the public  
25 moneys constituting the State of New Jersey Cash Management Fund  
26 in the same types of investments and subject to the same limitations  
27 provided for the investment of funds in the State Treasury. The  
28 director shall be responsible for the adequacy of the accounting  
29 services provided by the custodian bank and shall maintain such  
30 accounting records as may be required for that purpose.  
31 (cf: P.L.1977, c.281, s.1)

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33 4. This act shall take effect immediately.

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#### STATEMENT

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38 This bill permits the State Treasurer to select one or more State or  
39 federally chartered banks to act as a fiscal agent or custodian of State  
40 assets, and for State pension agencies. The bill requires the selected  
41 bank or banks to have a physical presence in the State through either  
42 a principal or branch office and to employ residents of the State. With  
43 changes to federal and State law permitting interstate branching, New  
44 Jersey no longer has a large national bank with its principal office in  
45 this State. Large national banks are present in this State only through  
46 branch offices.

1       In addition, the bill permits a bank selected as a custodian or fiscal  
2 agent by the State Treasurer to use other banks, located in any other  
3 state or country, as sub-custodians or sub-fiscal agents for assets of  
4 the State, provided that the bank selected by the State Treasurer to act  
5 as custodian or fiscal agent retains primary responsibility for those  
6 assets and provided further that any bank acting as sub-custodian or  
7 sub-fiscal agent be responsible to the same degree as the primary  
8 custodian or fiscal agent and be held accountable to the same degree  
9 of fiduciary duty and responsibility as the appointing primary custodian  
10 or fiscal agent.

11       In addition, the bill permits the State Treasurer, acting as custodian  
12 of public moneys in the Cash Management Fund, to select one or more  
13 national or State chartered banks for the custodianship of securities  
14 held in the fund and for recording the amounts deposited and  
15 withdrawn by each participant, the investment transactions entered  
16 into, and the balance to each participant's credit each day.

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21 Updates law concerning certain banks which the State Treasurer can  
22 select as custodian of funds, securities and assets of the State and as  
23 fiscal agent for State pension agencies.