

[First Reprint]
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:

7
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

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 Senate SSM committee amendments adopted June 12, 1997.

1 responsible for the services delegated to it to the same degree as the
2 primary custodian or primary fiscal agent and shall maintain
3 accounting records and be otherwise held accountable to the same
4 degree of fiduciary duty and responsibility as the appointing primary
5 custodian or fiscal agent.

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

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

11
12 2. (New section) As used in Section 1 of P.L.1954, c.22
13 (C.52:18A-8.1):

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

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

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

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

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

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

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

35 1. ¹a.¹ Notwithstanding the provisions of section 2 of P.L.1970,
36 c. 270 (C. 52:18A-90.2), the Director of the Division of Investment
37 may, subject to the approval of the State Investment Council and the
38 State Treasurer, establish, maintain and operate a common trust fund
39 to be known as the State of New Jersey Cash Management Fund in
40 which may be deposited the surplus public moneys of the State, its
41 counties, municipalities and school districts and the agencies or
42 authorities created by any of these entities. This fund shall be
43 considered a legal depository for public moneys and shall satisfy the
44 requirements in that regard of section 1 of P.L.1956, c. 174 (C.
45 52:18-16.1) and N.J.S. 40A:5-14.

46 ¹b.¹ The State Treasurer shall be the custodian of the fund and may

1 receive public moneys paid into the fund by any other custodian of
2 public moneys for the purpose of holding and investing said moneys.
3 In that capacity, he may enter into an agreement with [a bank or trust
4 company having its place of business within the State and organized
5 under the laws of the United States or of] any one or more of the
6 national banks and the banks authorized by this State to carry on a
7 banking business, as he may select, for the custodianship of securities
8 held in the fund and for recording the amounts deposited and
9 withdrawn by each participant, the investment transactions entered
10 into, and the balance to each participant's credit each day. A bank
11 selected by the State Treasurer as custodian pursuant to this section
12 shall have a physical presence in this State in the form of a principal
13 office or branch office and shall employ New Jersey residents. ¹Each
14 bank selected by the State Treasurer may use recognized depositories
15 or clearinghouses for the securities held in the fund or may use other
16 banks as sub-custodians or sub-fiscal agents for these securities,
17 provided that in every case each bank selected by the State Treasurer
18 shall retain primary responsibility for these securities.

19 c. If a bank selected by the State Treasurer delegates its
20 responsibilities as custodian or fiscal agent, or both, to a sub-custodian
21 or sub-fiscal agent, the sub-custodian or sub-fiscal agent shall be
22 responsible for the services delegated to it to the same degree as the
23 primary custodian or primary fiscal agent and shall maintain
24 accounting records and be otherwise held accountable to the same
25 degree of fiduciary duty and responsibility as the appointing primary
26 custodian or fiscal agent.

27 d. A bank selected by the State Treasurer as a primary custodian or
28 fiscal agent which delegates its responsibilities as custodian or fiscal
29 agent, or both, to a sub-custodian or sub-fiscal agent, shall not be
30 relieved of its fiduciary duties and responsibilities.

31 e.¹ The State Treasurer may promulgate such rules and regulations
32 pursuant to the Administrative Procedure Act, P.L.1968, c. 410 (C.
33 52:14B-1 et seq.), as he deems necessary for the efficient
34 administration of the State of New Jersey Cash Management Fund,
35 including but not limited to, (1) the specification of minimum amounts
36 which may be deposited in the fund and minimum periods of time for
37 which deposits shall be retained in the fund; (2) creation of a reserve
38 for losses; (3) provision for payment of administration expenses from
39 its earnings; and (4) distribution of the earnings in excess of such
40 expenses or allocation of losses to the several participants in a manner
41 which equitably reflects the differing amounts of their respective
42 investments and the differing periods of time for which such amounts
43 were in the custody of the fund.

44 f.¹ The Director of the Division of Investment may invest the
45 public moneys constituting the State of New Jersey Cash Management
46 Fund in the same types of investments and subject to the same

1 limitations provided for the investment of funds in the State Treasury.
2 The director shall be responsible for the adequacy of the accounting
3 services provided by the custodian bank and shall maintain such
4 accounting records as may be required for that purpose.

5 (cf: P.L.1977, c.281, s.1)

6

7 ¹4. (New section) As used in section 1 of P.L.1977, c.281
8 (C.52:18A-90.4):

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

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

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

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

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

24 "Sub-custodian" or "sub-fiscal agent" means a bank, located in any
25 state or country, to which a primary custodian or primary fiscal agent
26 may delegate its duties and responsibilities.¹

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28 ¹[4.] 5.¹ This act shall take effect immediately.

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