

17: 9A-35

4/23/87

LEGISLATIVE HISTORY CHECKLIST

NJSA: 17:9A-35 (Trust banks-- allow interim investment or deposit of excess trust funds)

CHAPTER 186

Laws Of: 1986

Bill No: S2109

Sponsor(s): O'Connor

Date Introduced: May 5, 1986

Committee: **Assembly:** Financial Institutions

Senate: Labor, Industry and Professions

Amended during passage: Yes Substituted for A2726 (not attached since identical to S2109.) Amendments during passage denoted by asterisks.

Date of Passage: **Assembly:** October 20, 1986
Senate: July 17, 1986

Date of Approval: December 10, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

12-10-86

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 2109**STATE OF NEW JERSEY**

INTRODUCED MAY 5, 1986

By Senator O'CONNOR

Referred to Committee on Labor, Industry and Professions

AN ACT concerning banks and qualified banks and amending
various sections of and supplementing P. L. 1948, c. 67.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

1 1. Section 35 of P. L. 1948, c. 67 (C.17:9A-35) is amended to
 2 read as follows:

3 35. Trust funds.

4 A. All moneys, securities and other property held by a quali-
 5 fied bank in fiduciary capacities pursuant to paragraphs (5), (6),
 6 (7), (8), (9) and (10) of section 28, shall be kept separate and
 7 apart from the moneys, securities and other property belonging
 8 to such bank, and such moneys, securities and other property
 9 shall not be liable for the debts or obligations of the bank; except
 10 that moneys held by a qualified bank in one or more such fiduciary
 11 capacities, awaiting investment or disbursement, may be deposited
 12 in a single account or in separate accounts with itself or with any
 13 other banking institution or with any bank, trust company or
 14 national banking association having its principal office in any
 15 other state. Moneys so deposited with itself may be used by the
 16 bank in the conduct of its business. Securities held by a qualified
 17 bank in fiduciary capacities may also be deposited with any other
 18 banking institution, or with any bank, trust company or national
 19 banking association having its principal office in any other state.
 20 The duties of the depository in respect to securities so deposited
 21 with it shall be confined to the safekeeping thereof, the collection
 22 of interest thereon for the account of the depositing qualified bank,

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
 is not enacted and is intended to be omitted in the law.**

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted June 19, 1986.**

****—Assembly committee amendment adopted October 20, 1986.**

23 and the performance of such other clerical or ministerial acts as
24 the depositing qualified bank may from time to time request. Noth-
25 ing herein contained shall be construed as relieving the depositing
26 qualified bank from the duty to account for all securities deposited
27 as authorized by this subsection.

28 B. In the event of the insolvency of a qualified bank which has
29 deposited such moneys with itself, such bank in such fiduciary
30 capacities shall have claims against the assets of the bank for
31 moneys so deposited, preferred over claims not otherwise entitled
32 to preference, but subordinate to all other claims which shall be
33 entitled to preference. In the event of the insolvency of any other
34 banking institution or of any bank, trust company or national
35 banking association having its principal office in any other state,
36 in which such moneys shall have been deposited, a qualified bank
37 which shall have made such deposits shall be liable for the amount
38 of such deposits as if such deposits had been made with it, and
39 shall be subrogated to its claims as fiduciary against the insolvent
40 banking institution, bank, trust company or national banking asso-
41 ciation, in which such deposits shall have been made.

42 C. Notwithstanding any other provisions of law, any qualified
43 bank holding securities in a trust estate, or any banking institution
44 holding securities as a custodian or managing agent, or as custo-
45 dian for a fiduciary, is authorized to deposit or arrange for the
46 deposit with the federal reserve bank in its district, any securities
47 so held the principal and interest of which the United States of
48 America or any department, agency or instrumentality thereof
49 has agreed to pay, or has guaranteed payment. Securities so de-
50 posited shall be credited to one or more accounts on the books of
51 such federal reserve bank in the name of such qualified bank or
52 such banking institution, to be designated fiduciary or safekeeping
53 accounts, to which other similar securities may be deposited. The
54 records of such qualified bank and the records of a banking insti-
55 tution acting as custodian, as managing agent or as custodian for a
56 fiduciary, shall at all times show the name of the party for whose
57 account the securities are so deposited. Ownership of, and other
58 interests in, such securities may be transferred by bookkeeping
59 entry on the books of such federal reserve bank without physical
60 delivery of certificates representing such securities. A qualified
61 bank or banking institution depositing securities pursuant to this
62 section shall be subject to such rules and regulations as, in the case
63 of State-chartered institutions the commissioner, and in the case
64 of national banks, the comptroller of the currency, may from time

65 to time issue. A qualified bank or banking institution acting as
66 custodian for a fiduciary shall, on demand by the fiduciary, certify
67 in writing to the fiduciary the securities so deposited by such
68 qualified bank or banking institution with such federal reserve
69 bank for the account of such fiduciary. A qualified bank shall, on
70 demand by any party to a judicial proceeding for the settlement
71 of such qualified bank's account as fiduciary, or on demand by the
72 attorney for such party, certify in writing to such party the
73 securities deposited by such qualified bank with such federal re-
74 serve bank for its account as fiduciary. This subsection shall
75 apply to any qualified bank or banking institution holding secur-
76 ities in a fiduciary, custodial or management capacity, acting on the
77 effective date of this act or who thereafter may act regardless of
78 the date of the agreement, instrument or court order pursuant to
79 which such qualified bank or banking institution is acting. Nothing
80 contained in this subsection shall be construed as relieving a quali-
81 fied bank or banking institution depositing securities as authorized
82 by this subsection from the duty to account for all securities
83 so deposited.

84 *D. (1) For each account held by a qualified bank in a fiduciary*
85 *capacity pursuant to paragraph (5), (6), (7), (8), (9), or (10) of*
86 *section 28 of P. L. 1948, c. 67 (C. 17:9A-28) all moneys in excess*
87 *of \$100.00 whether income or principal, which are awaiting invest-*
88 *ment or disbursement, which are not otherwise subject to direction*
89 *regarding investment and which are not held for distribution on*
90 *a monthly basis, shall be invested by the qualified bank or de-*
91 *posited with the qualified bank or with another qualified bank as*
92 *set forth in this paragraph. The bank shall invest or deposit that*
93 *portion of the moneys in excess of \$100.00 within 7 business days*
94 *of the account receiving or accumulating the \$100.00 or more. The*
95 *investment or deposit shall be in accordance with the "Prudent*
96 *Investment Law," N. J. S. 3B:20-12 et seq., and shall produce a*
97 *rate of return commensurate with the short-term market rate of*
98 *return then prevailing. If notice is given pursuant to paragraph*
99 *(2) of this subsection, in addition to other compensation that the*
100 *qualified bank is otherwise entitled to by law for services as a*
101 *fiduciary, it shall be entitled to pay itself out of the income earned*
102 *on the investment or deposit for its reasonable charges for the*
103 *maintenance and administration of the services referred to in this*
104 *subsection. A qualified bank shall not be required to perform these*
105 *investment services if it is not permitted under the terms of the*
106 *instrument governing the fiduciary capacity in which it serves, or*

107 *by the person empowered to direct investments, to receive reason-*
 108 *able compensation for providing these services, unless the qualified*
 109 *bank expressly agrees to provide the investment services without*
 110 *compensation.*

111 (2) *The qualified bank shall notify its customers who are re-*
 112 *ceiving or who will receive the investment services set forth in*
 113 *this subsection of the basis of the bank's charges for the services*
 114 *or any change in the basis of the bank's charges for the services.*
 115 *The notice shall be in writing and may be sent by regular mail*
 116 *and may be included with the periodic account statement. Notice*
 117 *given at any time prior to the institution of the services or within*
 118 *30 days after the institution of the services, or any change in the*
 119 *basis of the bank's charges for the services, shall be in compliance*
 120 *with this paragraph. For the purposes of this paragraph, "cus-*
 121 *tommer" means the person or persons who receive the periodic*
 122 *account statements issued by the qualified bank.*

123 *E. A qualified bank acting in a fiduciary capacity is authorized,*
 124 *in the absence of an express provision to the contrary, whenever*
 125 *a law, regulation, governing instrument or order directs, requires,*
 126 *authorizes or permits investment in United States government*
 127 *obligations, to invest in those obligations, either directly or in the*
 128 *form of securities of, or other interests in, any open-end or closed-*
 129 *end management investment company or investment trust regis-*
 130 *tered under the "Investment Company Act of 1940," 54 Stat. 847*
 131 *(15 U. S. C. § 80a-1 et seq.), if the portfolio of that investment*
 132 *company or investment trust is limited to United States govern-*
 133 *ment obligations and to repurchase agreements fully collateralized*
 134 *by United States government obligations, which collateral shall*
 135 *be delivered to or held by the investment company or investment*
 136 *trust, either directly or through an authorized custodian. Nothing*
 137 *in this subsection shall alter the power of a qualified bank to other-*
 138 *wise invest funds or assets which it may receive and hold in a*
 139 *fiduciary capacity, nor shall anything in this subsection affect the*
 140 *degree of prudence and judgment which is required of qualified*
 141 *banks generally.*

1 2. Section 79 of P. L. 1948, c. 67 (C. 17:9A-79) is amended to
 2 read as follows:

3 79. Annual meetings; notice.

4 A. The annual meeting of the stockholders of every bank shall
 5 be held on such day in January, February, March or April in each
 6 year as the [by-laws] *bylaws* shall provide; or, if there be no
 7 governing [by-law] *bylaw*, then on the fourth Tuesday in [Jan-

8 uary] *March*. The commissioner may require that prior notice be
 9 given to him of a change in the date of an annual meeting, and
 10 may prescribe the form of such notice and the time when such
 11 notice shall be given.

12 B. Not less than 10 days prior to the date fixed for such meet-
 13 ing, notice of the annual meeting shall be published once in a
 14-15 newspaper published and circulated in the municipality in which
 16 the bank maintains its principal office, or, if there be no such news-
 17 paper, then in one published in the county in which the bank main-
 18 tains its principal office or in an adjoining county, and which has
 19 general circulation in the municipality in which the bank maintains
 20 its principal office. In addition, notice of such meeting shall be
 21 given as provided in section 81. At such annual meeting, directors
 22 shall be elected and such other business may be transacted as may
 23 properly be brought before a meeting of stockholders, except that
 24 no business other than the election of directors shall be transacted
 25 at such meeting unless notice of such other business shall have
 26 been given in the manner provided by section 81. Notice of such
 27 other business need not be included in the publication of notice
 28 required by this section.

1 3. (New section) Any action required or permitted to be taken
 2 at a meeting of stockholders by P. L. 1948, c. 67 (C. 17:9A-1 et
 3 seq.) or the certificate of incorporation or bylaws of a bank, may
 4 be taken without a meeting if all stockholders consent thereto in
 5 writing. Whenever action is taken pursuant to this section, the
 6 written consents of the stockholders consenting thereto shall be
 7 filed with the minutes of proceedings of stockholders. Any action
 8 taken pursuant to this section shall have the same effect for all
 9 purposes as if the action had been taken at a meeting of the stock-
 10 holders. If any other provision of P. L. 1948, c. 67 (C. 17:9A-1
 11 et seq.) requires the filing of a certificate upon the taking of an
 12 action by the stockholders, and the action is taken in the manner
 13 authorized by this section, the certificate shall state that the action
 14 was taken without a meeting pursuant to the written consents of
 15 all of the stockholders.

1 4. Section 81 of P. L. 1948, c. 67 (C. 17:9A-81) is amended to
 2 read as follows:

3 81. Stockholders' meetings; notice.

4 Notice of all meetings of stockholders shall be given to the
 5 stockholders not less than ten nor more than [thirty] 60 days
 6 prior thereto, by mail, postage prepaid, addressed to each
 7 stockholder at his address as it appears on the books of the bank.

8 The notice shall specify the place, day and hour of the meeting and
 9 the nature of the business to be transacted. Except as otherwise
 10 provided by section seventy-nine, no business may be transacted
 11 at any meeting except that specified in the notice of the meeting.

1 5. Section 96 of P. L. 1948, c. 67 (C. 17:9A-96) is amended to
 2 read as follows:

3 96. Record date.

4 A. The board of directors may fix a date, which shall precede
 5 by not more than **[35]** 90 days

- 6 (1) the date of any meeting of stockholders, or
- 7 (2) the date upon which a dividend is to be paid, or
- 8 (3) the date upon which rights are to be allotted, or
- 9 (4) the date upon which any change or conversion or ex-
 10 change of capital stock is to take effect,

11 as a record date for the determination of the stockholders who
 12 are entitled

13 (5) to notice of and to vote at any such meeting, and at any
 14 adjournment thereof, or

15 (6) to receive payment of any such dividend, or

16 (7) to receive any such allotment of rights, or

17 (8) to participate in any such change, conversion or ex-
 18 change of capital stock,

19 and in any such case only stockholders of record at the close of
 20 business on the date so fixed shall be entitled to notice of and
 21 to vote at such meeting and at any adjournment thereof, or to
 22 receive payment of such dividend, or to receive such allotment
 23 of rights, or to participate in such change, conversion or exchange,
 24 as the case may be, notwithstanding any transfer of stock on the
 25 books of the bank after the record date so fixed.

26 B. If no such record date is fixed, only stockholders of record
 27 at the close of business on the ***[thirty-fifth]*** **sixty-fifth** day
 28 prior to (1) the date of such meeting, or (2) the date upon which
 29 such dividend is to be paid, or (3) the date upon which such rights
 30 are to be allotted, or (4) the date upon which such change, conver-
 31 sion or exchange of capital stock is to take effect, shall be entitled to
 32 notice of and to vote at such meeting and at any adjournment
 33 thereof, or to receive payment of such dividend, or to receive such
 34 allotment of rights, or participate in such change, conversion or
 35 exchange, as the case may be, notwithstanding any transfer of
 36 stock on the books of the bank subsequent to such ***[thirty-fifth]***
 37 **sixty-fifth** day.

1 6. Section 111 of P. L. 1948, c. 67 (C. 17:9A-111) is amended
 2 to read as follows:

3 111. Officers; election; appointment; limitation.

4 A. At the first meeting of the board of directors following each
5 annual meeting of the stockholders of a bank, the directors shall
6 elect a chairman of the board of directors, if the office of chairman
7 of the board of directors has been created pursuant to section 107,
8 *and* a president **[and one or more vice-presidents,]** from their own
9 number **[except that, where the directors have elected a chairman**
10 **of the board of directors who is not also the president, the directors**
11 **may but need not elect a vice-president from their own number].**
12 They shall also elect at such meeting either a cashier or a secretary
13 and a treasurer, none of whom need be a director. Other officers,
14 including **[additional]** *one or more* vice-presidents, who need not
15 be directors, may from time to time be elected or appointed by the
16 board of directors.

17 B. Any person who holds more than one office in a bank shall
18 not sign in more than one official capacity any writing requiring
19 the signatures of more than one officer of the bank.

1 7. This act shall take effect immediately, except that no bank
2 shall be required to comply with the provisions of this act for 90
3 days following the effective date.

BANKING AND FINANCIAL INSTITUTIONS

Allows banks with trust powers to invest or deposit excess trust funds on an interim basis, and concerning the corporate governance of banks.

3 111. Officers; election; appointment; limitation.

4 A. At the first meeting of the board of directors following each
5 annual meeting of the stockholders of a bank, the directors shall
6 elect a chairman of the board of directors, if the office of chairman
7 of the board of directors has been created pursuant to section 107,
8 *and* a president [and one or more vice-presidents,] from their own
9 number [except that, where the directors have elected a chairman
10 of the board of directors who is not also the president, the directors
11 may but need not elect a vice-president from their own number].
12 They shall also elect at such meeting either a cashier or a secretary
13 and a treasurer, none of whom need be a director. Other officers,
14 including [additional] *one or more* vice-presidents, who need not
15 be directors, may from time to time be elected or appointed by the
16 board of directors.

17 B. Any person who holds more than one office in a bank shall
18 not sign in more than one official capacity any writing requiring
19 the signatures of more than one officer of the bank.

1 7. This act shall take effect immediately, except that no bank
2 shall be required to comply with the provisions of this act for 90
3 days following the effective date.

STATEMENT

This bill includes several amendments to modernize P. L. 1948, c. 67 commonly known as the Banking Act of 1948 in regard to notices for stockholders' meetings, electing corporate officers, and allowing certain actions to be taken without a stockholders' meeting if all the stockholders consent to the action in writing.

The bill also amends that act to set out standards under which banks with trust powers shall invest or deposit funds, income or principal, on an interim basis pending distribution or more permanent investment. This process of interim investment is commonly known as "sweeping" of funds. Sweeping of funds is possible because of the use of computers and will result in greater return to trust customers.

BANKING AND FINANCIAL INSTITUTIONS

Allows banks with trust powers to invest or deposit excess trust funds on an interim basis pending distribution or investment to benefit trust customers.

52109(1986)

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT ON

Senate Bill No. 2109(OCR)

DATED: October 20, 1986

The Assembly Financial Institutions Committee favorably reports Senate Bill No. 2109(OCR) with technical amendment to conform this bill to Assembly Bill No.2726(OCR) previously released by the committee on September 11th.

This bill, as amended, makes several minor changes to the Banking Act of 1948 having to do with corporate governance, and provides for the sweeping of trust accounts by "qualified banks" (that is banks and savings banks with trust powers).

Section 2 of the bill fixes the fourth Tuesday in March, instead of the fourth Tuesday in January, as the date on which annual meetings of the stockholders must be held in absence of a bank bylaw setting the meeting date.

Section 3 of the bill provides that any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if all the stockholders of the bank consent thereto in writing.

Present law requires that notice of stockholders' meetings be given not more than 30 days prior to the meeting and also requires that the board of directors shall not fix a record date for determination of stockholders which precedes the meeting by more than 35 days. The amendments to these provisions in sections 4 and 5 of the bill change the maximum notice of stockholders' meetings from 30 to 60 days, and the maximum period between the meeting and the record date from 35 to 90 days.

In section 6, the bill deletes the provision which requires that if the offices of chairman and president of a bank are held by the same person, a director must serve as vice-president.

Finally, under section 1 of the bill, standards are established under which qualified banks are required to invest or deposit funds, income or principal in trust accounts on an interim basis pending distribution or more permanent investment. The process of interim investment is commonly known as "sweeping" of funds. It is a relatively recent device made practical by computerized programs which can efficiently identify and transfer funds available for investment for an interim period. This section also authorizes qualified banks to levy a reasonable

charge for the sweeping service, and applies the "prudent" standard for investments from present New Jersey trust law. It also permits qualified banks which are required by a trust instrument, statute or regulation to invest in United States Government obligations, to carry out those requirements or instructions by investing in mutual funds whose portfolio is limited to those obligations.

The amendments were technical in nature.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 2109

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 16, 1986

This bill makes various minor changes to the Banking Act of 1948 and provides for the sweeping of trust accounts by "qualified" banks.

Section 2 of the bill fixes the fourth Tuesday of March, instead of the fourth Tuesday in January, as the date on which annual meetings of the stockholders must be held in absence of a bank bylaw setting such meeting date.

Section 3 of the bill provides that any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if all the stockholders of the bank consent thereto in writing.

Present law requires that notice of stockholders' meetings be given not more than 30 days prior to the meeting and also requires that the board of directors shall not fix a record date for determination of stockholders which precedes the meeting by more than 35 days. The amendments to these provisions in sections 4 and 5 of the bill change the maximum notice of stockholders' meetings from 30 to 60 days, and the record date maximum period from 35 to 65 days.

The bill in section 6 deletes the provision which requires that if the offices of chairman and president of a bank are held by the same person, a director must serve as vice-president.

Finally, under section 1 of the bill, standards are established under which banks with trust powers (qualified banks) shall invest or deposit funds, income or principal in trust accounts, on an interim basis pending distribution or more permanent investment. This process of interim investment is commonly known as "sweeping" of funds. It is a relatively recent device made practical by computerized programs which can identify and invest funds which should be invested for an interim period. This section authorizes a reasonable charge for the "sweeping" service, and applies the "prudent" standard in present New Jersey trust law for investments. It also permits qualified banks which are required by a trust instrument, statute or regulation to invest in United States Government obligations, to carry out those requirements or instructions by investment in mutual funds whose portfolio is limited to those obligations.