ASSEMBLY, No. 5889

**STATE OF NEW JERSEY**

220th LEGISLATURE



INTRODUCED DECEMBER 14, 2023

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

“New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund Act”; creates trust fund for conveyance of certain assets for benefit of State-administered retirement systems; appropriates $20 million.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning the conveyance of certain assets to a trust fund for the benefit of the State-administered retirement systems, creating the New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund, amending and supplementing various parts of the statutory law, and making an appropriation.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. (New section) This act shall be known and may be cited as the “New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund Act.”

2. (New section) As used in sections 1 through 10 of this act, P.L. , c. (C. )(pending before the Legislature as this bill):

“360 review” means a comprehensive analysis that includes an assessment of a public entity’s fiscal condition, pursuant to section 6 of P.L. , c. (C. )(pending before the Legislature as this bill).

“Asset” means title to real and personal property, leaseholds, licenses, franchises, easements, concessions, and any other right, title or interest deemed appropriate by the administrator; land, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by such liens; and any other enterprise or asset, including public infrastructure, as that term is defined in section 10 of P.L.2014, c.63 (C.34:1B-251), tangible or intangible, deemed appropriate by the administrator under rules issued pursuant hereto.

“Asset conveyance” means the transfer and conveyance of all or any part of an entity’s ownership interest in an asset to the trust fund.

“Benefitting public entity” means a public entity, including any associated public entity, for which the conveyance of an asset to the fund would act to increase the pension funded ratio of the benefitting State-administered retirement system.

“Certificate of trust” means a document providing the fractional beneficial or economic interest in assets or income of the fund or any of its subaccounts.

“Fund” or “trust fund” means the New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund (ICARE) established pursuant to section 3 of P.L. , c. (C. )(pending before the Legislature as this bill).

“New Jersey Infrastructure Bank” or “bank” means the New Jersey Infrastructure Bank created pursuant to section 4 of P.L.1985, c.334 (C.58:11B-4).

“Public entity” means the State, and any county, municipality, district, or political subdivision, and any authority, agency, instrumentality, board or body of any of the foregoing. “Public entity” shall also mean any school district, community college, or public institution of higher education.

“Public-private partnership agreement” means an agreement entered into by a public entity and a private entity for the purpose of permitting the private entity to assume, in whole or in part, the financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a public asset.

“Qualified independent valuation agent” or “valuation agent” means an entity or person who is (1) accredited by the American Society of Appraisers to conduct appraisals or (2) an investment bank, trust company, accountant, engineer, or financial advisor qualified to perform fair market valuations of assets or render fairness opinions on the valuation of assets; and who is independent of the entity making, and the trust fund receiving, a conveyance of one or more assets.

“Real property” means land, and anything growing on, affixed to, or built upon land, any or all real property, any improvements thereon, and any easements rights appertaining thereto.

“Special asset” means the fund assets, including the holding account but excluding the investment account.

3. (New section) a. There is established a body corporate and politic, with corporate succession, to be known as the “Infrastructure Capital Asset Reassignment Enterprise Fund,” also known as ICARE. The fund is constituted as an instrumentality of the State exercising public and essential governmental functions, no part of whose revenues shall accrue to the benefit of any individual, and exercising the powers conferred by the provisions of this act P.L. , c. (C. )(pending before the Legislature as this bill).

The fund is intended to operate consistent with federal Internal Revenue Code (26 U.S.C. s.115). The fund shall be a trust, trust account, or custodial account, the assets of which shall be deemed an arrangement equivalent to a trust for all legal purposes, and shall be established by means of appropriate documentation so as to comply with and be exempt from taxation under applicable provisions of federal and State law.

The purpose of the fund shall include, but may not be limited to, lessening the burdens of government by providing a fund through which a public entity may contribute, transfer, or sell its revenue-producing assets to a segregated or commingled account and share the risks and benefits of the performance of those assets, to maximize the performance and long-term value of those assets, which value shall be known as the special asset value of the conveyed assets and shall act to increase the pension funded ratio of the benefitting public entity. Collectively, the special asset value of all assets held by the fund shall be known as the fund’s special asset value.

The fund shall be administered by an administrator retained, appointed, or procured by the Infrastructure Capital Asset Reassignment Enterprise Fund. The assets of the fund shall be maintained as a separate account segregated from all other funds of the State, the administrator and the non-State public employers participating in State-administered retirement systems. The fund shall be legally independent and separate, regardless of its treatment for tax, accounting, reporting, securities law, or other purposes.

The fund shall maintain appropriate books and records in compliance with generally accepted accounting principles and subject to annual financial audit by a nationally recognized accounting firm.

No person shall use or authorize the use of the assets in the fund, or the investment earnings thereon, for any purpose other than for the maximization of the value of the assets in the fund, including meeting or exceeding the level of service required to operate the asset pursuant to State and federal law and regulations for the safety of the public and the environment, and for the benefit of members and retirees in the State-administered retirement systems, and for defraying the reasonable costs of administering the fund.

The Infrastructure Capital Asset Reassignment Enterprise Fund board, created pursuant to section 4 of this act, P.L.    , c.    (C.        )(pending before the Legislature as this bill) shall undertake any administrative action necessary to establish the fund in any form suitable to carry out the purposes of this act. The fund may be subdivided as appropriate.

The fund shall be established to receive, acquire, and improve assets and to issue certificates of trust conveying beneficial ownership of those assets to the State-administered retirement system or systems in which the public entities participate. Assets in the fund shall be maintained in one or more segregated subaccounts in a manner determined by the administrator. The comingling of any assets or holdings in a subaccount shall not alter any underlying beneficial interest assigned in certificates of trust issued pursuant to this act.

The transfer agreement may permit the optimization of the asset for conveyance, in part or in whole. Only that portion of the conveyed asset that is net of financing costs, amounts deposited into the investment account, and other distributions made to, or on behalf of the public entity shall be evidenced by certificates of trust and credited to the holding account of the Common Pension Fund as provided in section 9 of P.L. , c. (C. )(pending before the Legislature as this bill). Whereas the fund’s asset distributions, net of financing costs and any distributions to, or on behalf of the public entity, shall be deposited into the investment account of the Common Pension Fund as provided in section 9 of P.L.    , c.    (C.        )(pending before the Legislature as this bill).

The fund and the assets therein shall be maintained such that bond issuance may qualify as a “State or local bond” as that term is defined in paragraph (1) of subsection (c) of section 103 of the Internal Revenue Code (26 U.S.C. s.103(c)(1)), and any similar provisions under the laws of this State.

b. This act shall not be construed to prohibit the holding of any assets in any special purpose entity, limited liability corporation, limited partnership, not-for-profit corporation, public benefit corporation, or any other arrangement deemed appropriate by the board.

4. (New section) a. The Infrastructure Capital Asset Reassignment Enterprise Fund shall have a board, comprised of five members as follows: A member of the New Jersey Infrastructure Bank, a member of the Division of Investments, established pursuant to section 1 of P.L.1950, c.270 (C.52:18A-79) or their designee, who shall serve ex officio, and three members of the public appointed by the Governor. To the extent able, members appointed by the Governor should have experience and expertise in the Employee Retirement Income Security Act of 1974 and laws governing public pension plans, experience and expertise in pension finance or experience and expertise in the construction trades. Each public member shall be appointed for a term of three years, with staggered terms. Members shall remain active until their successor is qualified. The chairperson shall be determined by the Governor and the director of the Division of Investment shall serve as treasurer of the board and as vice chairperson of the board. The position of secretary shall be elected from among the three public members of the board. The term for secretary shall be three years. The board shall be constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the board of the powers conferred by this act P.L. , c. (C. )(pending before the Legislature as this bill) shall be deemed and held to be an essential governmental function of the State. Notwithstanding the existence of common management, the board shall be treated and accounted for as a separate legal entity.

b. The members of the Infrastructure Capital Asset Reassignment Enterprise Fund shall serve without compensation, but the fund shall reimburse the members for actual and necessary expenses incurred in the performance of their duties. Notwithstanding the provisions of any other law to the contrary, no officer or employee of the State shall be deemed to have forfeited or shall forfeit the officer's or employee's office or employment or any benefits or emoluments thereof by reason of the officer's or employee's acceptance of the office of ex officio director of the fund or the ex officio director's services thereon.

c. Except as otherwise limited by the provisions of this ct, the Infrastructure Capital Asset Reassignment Enterprise Fund may:

(1) make and alter bylaws for its organization and internal management and, subject to agreements with holders of its bonds, notes or other obligations, make rules and regulations with respect to its operations, properties and facilities;

(2) adopt an official seal and alter it;

(3) sue and be sued;

(4) make and enter into all contracts, leases, and agreements necessary or incidental to the performance of its duties and the exercise of its powers under the provisions of this act, and subject to any agreement with the holders of fund’s bonds, notes, or other obligations, consent to any modification, amendment, or revision of any contract, lease, or agreement to which the trust is a party;

(5) enter into agreements or other transactions with and accept grants, appropriations, and the cooperation of the State, or any State agency, in furtherance of the purposes of this act, and do anything necessary in order to avail itself of that aid and cooperation;

(6) receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used, and applied to carry out the purposes of this act, subject to the conditions upon which that aid and those contributions may be made, including, but not limited to, gifts or grants from any department or agency of the State, or any State agency, for any purpose consistent with the provisions of this act;

(7) acquire, own, hold, construct, improve, rehabilitate, renovate, operate, maintain, sell, assign, exchange, lease, mortgage or otherwise dispose of real and personal property, or any interest therein, in the exercise of its powers and the performance of its duties under the provisions of this act;

(8) retain, appoint, or procure an administrator and any other officers or employees as it may require for the performance of its duties, without regard to the provisions of Title 11A of the New Jersey Statutes. The administrator shall have at least 15 years of experience in infrastructure development, management or finance, pension fund infrastructure investment experience, or public administration experience managing or financing of infrastructure assets or managing state agencies that finance public infrastructure assets;

(9) borrow money, issue bonds, notes and other obligations, securing the same, and provide for the rights of the holders thereof. May, as legally permissible, pledge assets of the fund as security for such bonds, notes and other obligations, for any of the following purposes: paying the costs of acquiring, constructing, renovating, equipping, expanding, improving, or operating the assets of, or assets to be transferred to, the fund; paying expenses incident to or incurred in connection therewith; facilitating the transfer of any asset to the fund, including but not limited to, the refinance, extension, or reissuance of debt of the asset in the name of the fund;

(10) subject to any agreement with holders of its bonds, notes or other obligations, invest moneys of the Infrastructure Capital Asset Reassignment Enterprise Fund not required for immediate use, including proceeds from the sale of any bonds, notes or other obligations, in any obligations, securities and other investments in accordance with the rules and regulations of the Division of Pensions and Benefits or as may otherwise be approved by the Director of the Division of Investment in the Department of the Treasury upon a finding that such investments are consistent with the corporate purposes of the Infrastructure Capital Asset Reassignment Enterprise Fund;

(11) procure insurance to secure the payment of its bonds, notes or other obligations or the payment of any guarantees or loans made by it in accordance with the provisions of this act, or against any loss in connection with its property and other assets and operations, in any amounts and from any insurers as it deems desirable;

(12) engage the services of attorneys, accountants, engineers, and financial experts and any other advisors, consultants, experts including a trustee or custodian for the fund and agents as may be necessary in its judgment and fix their compensation;

(13) subject to any agreement with holders of its bonds, notes or other obligations, purchase bonds, notes and other obligations of the Infrastructure Capital Asset Reassignment Enterprise Fund and (a) hold the same for resale for any duration, including until maturity thereof, including in connection with any cross-investment initiative of the trust, or (b) provide for the cancellation thereof, all in accordance with the provisions of this act;

(14) charge to and collect from the fund such monies as shall be sufficient to pay for all reasonable costs necessarily incurred by the Infrastructure Capital Asset Reassignment Enterprise Fund in connection with its management of the fund and responsibilities under this Act;

(15) any monies collected by the Infrastructure Capital Asset Reassignment Enterprise Fund pursuant to this subsection may be deposited and maintained in a special fund separate from any other funds held by the Infrastructure Capital Asset Reassignment Enterprise Fund and shall be available for any corporate purposes of the Infrastructure Capital Asset Reassignment Enterprise Fund;

(16) subject to any agreement with holders of its bonds, notes or other obligations, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds, notes and other obligations of the Infrastructure Capital Asset Reassignment Enterprise Fund or for the purchase upon tender or otherwise of the bonds, notes or other obligations, lines of credit, letters of credit and other security agreements or instruments in any amounts and upon any terms as the Infrastructure Capital Asset Reassignment Enterprise Fund may determine, and pay any fees and expenses required in connection therewith; and

(17) take any action necessary or convenient to the exercise of the foregoing powers or reasonably implied therefrom.

d. The board shall possess all executive powers, duties, and responsibilities over the fund and all of the assets contained therein, and all the powers as a body corporate necessary and convenient to accomplish the purposes of P.L. , c. (C. )(pending before the Legislature as this bill).

e. The board shall serve as the fund fiduciary and representative of the holders of certificates of trust and shall represent the interests thereof in financial dealings of the fund and its assets. The board shall be responsible to perform all duties otherwise necessary to effectuate the purposes of this act, including the duty to maximize the long-term value of assets in the fund. The board, as fiduciary, shall:

(1) in the event of a conflict of interest or other circumstance preventing the administrator from exercising any of its powers or duties as established herein, exercise such powers and responsibilities;

(2) review and approve or reject the report issued by the qualified independent valuation agent, which approval shall not be unreasonably withheld;

(3) review and approve or reject the terms of the certificates of trust and any financial transaction involving a change in beneficial ownership of fund assets pursuant to such certificates. The board shall ensure that the rights conveyed to a State-administered retirement system in a certificate of trust includes the right to receive monetary distributions in proportion to the system’s respective interests, and generally protects the liquidity of pension assets, given that conveyance in a certificate of trust may restrict the right to transfer or otherwise dispose of interest in, or to withdraw from, the fund;

(4) invest and manage the proceeds of and investment earnings on assets in the fund, and distribute proceeds and investment earnings to the holders of the certificates of trust in proportion to their relative equitable interests in the account or subaccount from which the disbursement is made, consistent with the provisions of section 10 of this act, P.L. , c. (C. )(pending before the Legislature as this bill);

(5) sell, exchange, or re-invest the assets of the fund, subject to a right of first refusal by the benefitting public entity in which the asset is located;

(6) select and contract with consultants, including independent fiduciaries, lawyers, and other services providers with respect to the administration of the fund in accordance with federal and State law;

(7) procure an independent fund manager that shall carry out the duties and obligations set forth by the fund. The fund manager shall ensure the independent performance of all duties delegated to it by fund, and shall operate, manage, conduct, and control assets of the fund, and the subaccounts thereof, with the goal of maximizing the value of the assets in the fund over the long term and ensuring that each asset meets or exceeds the level of service required to operate the asset pursuant to State and federal law and regulations for the safety of the public and the environment. The fund manager shall be, or be affiliated with, a registered investment adviser under the “Investment Advisers Act of 1940,” 15 U.S.C. s.80b-1 et seq., and shall have considerable public finance and public infrastructure experience. The manager shall be a fiduciary with respect to the fund and any appropriate subaccounts thereof. The board and the administrator may delegate certain of its responsibilities to the manager, which may include but not be limited to, asset management, reporting requirements, procurement of consultants and legal services, and conducting, managing, and overseeing 360 reviews and financings; and

(8) meet at least once per calendar year.

f. There shall be established an advisory committee to the board comprised of each municipality or county which is a benefitting public entity. The advisory committee members shall serve for two years. Members of the advisory committee shall be appointed by the secretary of the board upon the recommendation from the executive of the public entity. All public information that is distributed to board members relative to board meetings shall also be provided simultaneously to the advisory committee members. The purpose of the advisory committee is to provide the board with advice and information relevant to local systems. The advisory committee shall not have any voting or veto authority over the board.

g. The advisory committee members shall receive no compensation.

5. (New section) a. The administrator shall have a fiduciary duty, which shall include maximization of the value of an asset over the long-term, to the holders of certificates of trust issued pursuant to this act, P.L. , c. (C. )(pending before the Legislature as this bill). The administrator shall take any necessary action to protect the rights of the holders of certificates of trust and shall, in exercising the duties and responsibilities under this section, be liable for breach of a duty arising from P.L.    , c.    (C.        )(pending before the Legislature as this bill).   The administrator shall ensure that each asset meets or exceeds the level of service required to operate the asset pursuant to State and federal law and regulations for the safety of the public and the environment.

The administrator shall present any contract to the board for approval to obtain a fair market valuation, entering into any asset transfer agreement, or determining the terms for the certificates of trust, including any transfer, sale, or assignment thereof. The administrator shall notify the board of any conflict or other circumstance that prevents, or could reasonably prevent, the administrator from exercising any powers or duties.

b. The powers of the administrator shall include, but not be limited to:

(1) notwithstanding any other provision of State law to the contrary, establishing the terms and conditions of any transaction to effectuate an asset conveyance consistent with the provisions of section 7 of this act, P.L. , c. (C. )(pending before the Legislature as this bill);

(2) operating, improving, developing, redeveloping, constructing, reconstructing, maintaining, renovating, rehabilitating, repositioning, managing, leasing, and mortgaging the assets of the fund;

(3) selecting and contracting with consultants, engineers, operators, independent fiduciaries and other services providers with respect to the administration of the fund in accordance with federal and State law, including, but not limited to, maintenance and operation of the assets in the fund, conducting 360 reviews pursuant to section 6 of this act, P.L. , c. (C. )(pending before the Legislature as this bill), due diligence reviews on prospective asset conveyances, and, in consultation with the board, any fair market valuations pursuant to section 7 of this act, P.L.    , c.   (C.       )(pending before the Legislature as this bill); and

(4) charging and collecting fees and expense reimbursements against an asset of the fund or of any entity conveying an asset for the efficient administration of the fund. Any funds so collected, including all interest and investment income earned on these funds, shall be used for the benefit and administration of the fund.

c. The administrator and the benefitting public entity, or its successor, shall meet annually with the fund manager to conduct a comprehensive contract review of the asset transfer agreement as follows, which review shall include, but may not be limited to: the prior year’s management performance, including financial operations, capital investment, and future capital needs; the current year’s budget; compliance with operating and performance standards as enumerated in the asset transfer agreement; a forecast of future financial operations, including, if appropriate, projected user rates and charges; and recommendations for any amendments to the asset transfer agreement.

6. (New section) a. The administrator shall ensure that every public entity that proposes an asset conveyance receives a 360 review prior to completion of the conveyance. The administrator shall provide a report detailing the review to the board upon completion. The administrator shall retain, appoint, or procure a qualified contractor or vendor, to conduct the 360 review, the performance of which shall be deemed the rendering of services of a technical and professional nature under subsection (a) of section 4 of P.L.1954, c.48 (C.52:34-9). A benefitting public entity shall provide to the qualified contractor or vendor any information necessary to allow for the conduct of a comprehensive 360 review, including but not limited to, fiscal information requested by the contractor or vendor, and an inventory of assets necessary to perform an enterprise asset optimization analysis pursuant to subsection b. of this section.

b. The report shall include, as appropriate:

(1) a credit and financial analysis that uses data and models comparable to those used by ratings agencies and private vendors to compare the benefitting public entity’s current fiscal condition and projected baseline fiscal projections against the projected fiscal condition of the benefitting public entity with optimized assets and liabilities pursuant to the findings of the review;

(2) an enterprise asset optimization analysis that assesses alternate organizational and governance structures of revenue-generating assets, which may include, but not be limited to, alternate business plans, ownership structures, engineering analysis of underlying asset conditions, optimization strategies, and State and federal programs that can be leveraged to further enhance the revenue possibilities for the assets, as well as a list of findings for any asset optimization plan that may include, but not be limited to:

(a) the projected impact on customer rates and charges, both short-term and long-term;

(b) a list of risks, liabilities, and responsibilities to be transferred to the fund or to other parties and those to be retained by the transferring entity;

(c) a preliminary estimate of the fair market value of the asset;

(d) an assessment of the impact that conveyance of the asset will have on the benefitting public entity’s annual pension contributions to State-administered retirement systems and on its share of actuarial value of assets;

(e) an estimate of the overall financial benefits that the conveyance may provide to a benefitting public entity;

(f) a comparison of the financial and non-financial benefits of the conveyance as compared to other options, including, without limitation, a continuation under the then existing public entity structure; and

(g) a list of conditions precedent to the acceptance by the fund of an asset pursuant to a transfer agreement.

(3) a pension funding alternatives analysis that outlines how actuarial value of assets, unfunded actuarial accrued liabilities and annual employer contributions would change under various funding scenarios, including through the conveyance of public assets;

(4) a liability optimization analysis that examines current and future liabilities of the benefitting public entity and various alternatives available to a benefitting public entity to address those liabilities, including alternate debt structures and budgeting practices; and

(5) in the case of a water system asset, a description of any emergent conditions that exist at the asset, a list of remedial actions necessary to address the emergent conditions, including any necessary infrastructure improvement projects, a plan for undertaking the remedial actions, their respective costs, the proposed construction schedule based on priority and affordability.

c. The administrator shall use the report and the qualified independent valuation agent report as required by section 7 of this act, P.L. , c. (C. )(pending before the Legislature as this bill), in structuring any agreement governing the conveyance by a public entity of an asset to the fund. The board shall use the report and the qualified independent valuation agent report when determining whether to accept an asset or an independent valuation thereof.

7. (New section) a. A public entity may convey to the fund an asset held by the public entity. The conveyance shall be governed by a transfer agreement, which shall be proposed by the administrator, in consultation with the board, and approved by the governing body of the public entity as evidenced by a resolution adopted by a majority of its authorized membership.

The transfer agreement may permit the optimization of the asset for conveyance, in part or in whole. Only that portion of the conveyed asset including, but not limited to, real property, intangible assets, cash, and investments, that have not been distributed to, or on behalf of the public entity or amounts deposited into the investment account on behalf of the public entity shall be evidenced by certificates of trust and credited to the holding account of the Common Pension Fund as provided in section 9 of P.L. , c. (C. )(pending before the Legislature as this bill). Assets held in the holding account may be treated as special assets and the estimated fair market value of holding account assets shall be reappraised at least annually but not more than quarterly.

Asset contributions on behalf of the public entity and the fund’s asset distributions shall be deposited in the investment account of the Common Pension Fund as provided in section 9 of P.L. , c. (C. )(pending before the Legislature as this bill). The fund’s asset distributions shall be from cash and investments deemed to be more than amounts required for proper operations, capital investment, and administration of the conveyed asset, and may include, but shall not be limited to, asset conveyance amounts net of financing costs, debt obligations and other liabilities secured by, or payable from, the conveyed asset, and any distribution to, or on behalf of the public entity, and investment income, proceeds of asset sales, lease or other entitlements, and any other amounts as the board may determine. These assets shall be invested and distributed to the State-administered retirement systems as directed by the transfer agreement for the account of the beneficial public entities. The asset value contributed to the investment account shall be added to the actuarial value of assets and increase assets attributable to the benefitting public entity on a proportional basis. The benefitting public entity’s funding ratio may be calculated by the sum of its actuarial value of assets, including amounts held in or transferred from the investment account and the value of special assets held in its holding account divided by its actuarial accrued liabilities.

The State-administered retirement systems shall not be required or permitted to pay any expenses incurred in connection with the conveyance of an asset pursuant to this act, P.L.    , c.    (C.        )(pending before the Legislature as this bill).

b. An asset conveyance shall meet all of the following conditions:

(1) the fair market value of the public asset conveyed has been established by a qualified independent valuation agent unaffiliated with any of the State-administered retirement systems or with the public entity making the conveyance, which valuation shall have been affirmed as acceptable by both the public entity and the administrator;

(2) the terms and conditions of the asset conveyance transaction shall be no less favorable to the applicable retirement system than those in any transaction with a willing buyer;

(3) the administrator shall ensure that a 360 review is performed pursuant to section 6 of P.L. , c. (C. )(pending before the Legislature as this bill);

(4) the asset conveyance transaction is administratively feasible;

(5) the asset conveyance transaction is in the best interests of the retirement system or systems and its members and retirees and sufficiently protects the rights of such persons; and

(6) the asset conveyance transaction is consistent with all other standards and requirements provided under this act.

c. Should the administrator or board determine that emergent conditions, as described under section 5 of P.L.2015, c.18 (C.58:30-5), exist pursuant to paragraph (5) of subsection b. of section 6 of P.L , c. (C. )(pending before the Legislature as this bill), and that action is necessary to address the emergent conditions, the following shall occur:

(1) the administrator shall ensure that a 360 review is performed pursuant to section 6 of P.L. , c. (C. )(pending before the Legislature as this bill), which review shall be transmitted to the board and the public entity and available for public review;

(2) the public entity shall, within 180 days of receipt of the report produced pursuant to the 360 review, undertake remedial action as necessary to address the emergent conditions, including, but not limited to:

(a) funding necessary capital and operational improvements through (i) necessary legislative or executive action to effectuate an increase in the charges, rates, or fees that will be paid for services generated by the public asset by users in the applicable jurisdiction or service area, (ii) entering into financing agreements, (iii) applying for and receiving grants, donations or other financial assistance from available public or private sources, (iv) procuring qualified vendors to make necessary improvements, or (v) any other action necessary to secure such funding. Any action proposed to be undertaken by a public entity pursuant to this subparagraph shall be reviewed and approved as sufficient to correct the emergent condition by the Department of Environmental Protection;

(b) entering into a sale or long-term lease of the asset pursuant to applicable State law and any local ordinances or regulations, including under the “Water Infrastructure Protection Act,” P.L.2015, c.18 (C.58:30-1 et seq.) or under any other law governing applicable public-private partnership agreements, as appropriate; or

(c) propose the asset for conveyance to the New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund pursuant to subsections a. and b. of this section; and

(3) the public entity shall provide notice to the public of the remedial action chosen to be undertaken pursuant to this section on its official Internet website no later than 180 days of receipt of the report produced pursuant to the 360 review. If an applicable official website does not exist, the public entity shall contact the Department of Community Affairs, and the notice shall be published on the official Internet website of the Department of Community Affairs.

d. Beneficial interests of 25 percent or more in a public asset held by the New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund may not be granted by the fund to a private entity until after the first day of the fifth year following conveyance of the asset to the fund.

8. (New section) a. (1) An asset proposed for conveyance to, or acquisition by, the fund shall be valued by an independent valuation agent pursuant to paragraph (2) of this subsection, and shall be revalued periodically if requested by the administrator, which revaluation shall occur at least once but not more than quarterly in any State fiscal year, whether discretionary or otherwise, or more frequently, as deemed necessary by the board.

(2) Upon receipt of a written notice by an entity of its intention to make an asset conveyance, sale, or exchange, which notice shall identify the asset, the administrator shall contract for the services of a qualified independent valuation agent to evaluate and conduct a valuation of the proposed asset.

The qualified independent valuation agent shall issue a report representing its opinion as to the valuation of the asset in accordance with an asset conveyance, sale, or exchange.

The asset value shall exclude proceeds counted in any prior actuarial valuation as a receivable and may be in an amount less any costs associated with consummating the asset conveyance.

An asset conveyance shall not be effectuated until after the report has been issued and both the administrator, upon approval from the board, and the public entity accept the proposed value. If either rejects the proposed value, the conveyance, sale, or exchange shall not be effectuated, and any written agreement for the conveyance of an asset shall be void.

b. The valuation as set forth in the transfer agreement shall serve as the basis for the beneficial interest assigned in corresponding certificates of trust to the State administered retirement accounts, accounting for the fair market value of the asset, less any costs associated with consummating the asset conveyance and any distributions to, or on behalf of the public entity including deposits to the investment account.

Upon execution of an asset transfer agreement, and pursuant thereto, the administrator shall provide for the transfer into the fund of the asset. Ownership in the trust fund shall be delineated by units which shall be evidenced by certificates issued by the trust fund to the State-administered retirement systems.

During such time as an asset remains in the fund, all new assets acquired by or for the asset shall be owned by the fund, the beneficial interests in which assets shall be in such amounts as are dictated by the certificates of trust, except those assets which may only be held, licensed, acquired, or procured by a public entity making the conveyance, in which case such assets shall be held, licensed, acquired, or procured thereby on behalf of and for the benefit of the fund.

9. (New section) a. In order to receive the asset contribution on behalf of the retirement systems, a Common Pension Fund is hereby established within the Division of Investment in the Department of the Treasury. The Common Pension Fund shall constitute part of each retirement system and the participating trust through which each retirement system is funded. Only the retirement systems and the trusts through which they are funded shall have an interest in the Common Pension Fund. The Common Pension Fund shall satisfy the requirements of section 401(a)(24) of the federal Internal Revenue Code of 1986 (26 U.S.C. s.401(a)(24)), as amended, in accordance with Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67 and Revenue Ruling 2011-1, and the requirements for exemption under section 501(a) of the federal Internal Revenue Code of 1986 (26 U.S.C. s.501(a)), as amended. Consistent with section 401(a)(24) of the federal Internal Revenue Code of 1986 (26 U.S.C. s.401(a)(24)), as amended, regulations of the United States Department of the Treasury, and other guidance of the federal Internal Revenue Service, each retirement system shall participate in the Common Pension Fund. No part of the corpus or income of the Common Pension Fund that equitably belongs to a retirement system or a trust of the retirement system may be used for or diverted to any purpose other than for the exclusive benefit of the members or beneficiaries entitled to benefits under such retirement system or trust of the retirement system.

b. Upon the establishment of the Common Pension Fund, there shall be established two subaccounts therein as the asset holdings account and investment account for the following purposes:

(1) the certificates of trust shall be deposited into an asset holdings account. As provided in section 4 of P.L.    , c.    (C.        )(pending before the Legislature as this bill), the ICARE fund’s board solely shall manage the asset holdings account and shall make deposits therein, invest amounts therein, make requisition and payment for costs incurred in the operation and administration of the fund’s assets, and otherwise manage the asset holdings account. All interest in the assets deposited in the asset holdings account shall be qualified plan assets subject to the requirements of sections 401(a) and 501(a) of the federal Internal Revenue Code of 1986 (26 U.S.C. ss.401(a) and 501(a)), as amended, but shall not be assets managed by the Division of Investment for the benefit of the retirement systems under N.J.S.18A:66-61, section 14 of P.L.1944, c.255 (C.43:16A-14), or section 32 of P.L.1954, c.84 (C.43:15A-32) until any such assets have been transferred from the asset holdings account to the investment account;

(2) proceeds in amounts determined by the fund shall be transferred from the asset holdings account to the investment account on a periodic basis and such proceeds shall constitute the distributions of the fund’s asset. Such proceeds transferred together with all investments thereof and investment earnings thereon shall be available solely to and for the benefit of the retirement systems. The investment account shall be managed and invested by the Director of the Division of Investment pursuant to the authority, responsibilities, and duties set forth in P.L.1950, c.270 (C.52:18A-79 et seq.), subject to the oversight of the State Investment Council, pursuant to the authority of P.L.1950, c.270 (C.52:18A-79 et seq.). The Director of the Division of Investment shall have full discretion to distribute proceeds and all investments thereof and investment earnings thereon from the investment account into investment vehicles managed by the Division of Investment on behalf of the retirement systems. The investment account may be further subdivided into subaccounts in the discretion of the Director of the Division of Investment for purposes of investing in different types of investments; and

(3) notwithstanding any provision of this act, P.L.    , c.    (C.        )(pending before the Legislature as this bill), or any other provision of law to the contrary, the Director of the Division of Investment and the State Investment Council shall not have any responsibility for the asset holdings account of the Common Pension Fund and shall not be liable for any claims, demands, suits, actions, damages, judgments, costs, charges, or expenses, including court costs or attorneys' fees in any way related to such account. Notwithstanding the establishment of the Common Pension Fund in the Division of Investment, the Director of the Division of Investment, the Division of Investment, and the State Investment Council shall not have any authority to manage the fund’s assets or the asset holdings account.

c. Upon receipt of the certificates of trust to be contributed to the holding account and any assets to be contributed to the investment account, the Director of the Division of Investment shall: (1) invest and manage all assets in the investment account; (2) make distributions of proceeds and investment earnings thereon from the investment account into investment vehicles managed by the Division of Investment for the sole benefit of the retirement systems; and (3) make distributions of proceeds and investment earnings thereon from the investment account to the retirement systems from the Common Pension Fund to be used by each retirement system for any legitimate purpose of such retirement system; provided that any distribution under this part shall be made on a simultaneous and pro rata basis to the retirement systems, which pro rata basis shall be based on each retirement system's relative equitable interest in the asset contribution.

d. The portion of the asset contribution allocated to each retirement system shall increase the funded ratio with respect to eligible members of such retirement system, provided, however, all amounts in the investment account, to the extent of the interest of each retirement system therein, may be distributed by the Director of the Division of Investment to the retirement systems from the Common Pension Fund and used by each retirement system for any legitimate purpose of such retirement system, provided that any such distribution shall be made on a simultaneous and pro rata basis to the retirement systems, which pro rata basis shall be based on each retirement system's relative equitable interest in the asset contribution.

For the purpose of this subsection, the funded ratio shall be the ratio of the actuarial value of assets plus the value of the special asset, determined in accordance with section 38 of P.L.2010, c.1 (C.43:3C-14), to the actuarially determined accrued liabilities expressed as a percentage.

10. (New section) a. The beneficial interests in enterprise assets of the fund shall be accounted for in certificates of trust, which shall outline the terms by which that beneficial interest shall be realized and exercised. Certificates of trust shall be held in a Common Pension Fund on behalf of the State-administered retirement system.

For the avoidance of doubt, the transfer agreement may permit the optimization of the asset for conveyance, in part or in whole. Only that portion of the conveyed asset, excluding costs associated with conveyance, financing costs, amounts distributed to, or on behalf of the public entity, including deposits into the investment account, shall be evidenced by certificates of trust and credited to the holding account of the Common Pension Fund as provided in section 9 of P.L. , c. (C. )(pending before the Legislature as this bill). Whereas the fund’s asset distributions, net of financing costs and any distributions to, or on behalf of the public entity, shall be deposited to the investment account of the Common Pension Fund as provided in section 9 of P.L. , c. (C. )(pending before the Legislature as this bill).

b. Upon acceptance of an asset into the fund, the administrator shall assign the entire beneficial interest in that asset to the State-administered retirement system, as designated in a transfer agreement. A holder of a certificate of trust may sell or convey those beneficial interests to other entities, in consultation with the administrator and the board, so long as such sale does not impair the tax status of the trust or assets held by the trust, and for the purpose of ensuring the long-term viability of a retirement system or improving the financial returns and liquidity thereof.

c. The administrator shall ensure that the terms and conditions of the certificates of trust allow the underlying assets to be comingled or divided amongst accounts and subaccounts of the fund, or to be distributed to outside entities by the administrator, as necessary, to provide for the most efficient management of the assets practicable, including the sale of certificates to other pension systems, so long as such sale does not impair the tax status of the fund or the assets. The terms of the certificates of trust shall provide for a continuous accurate reflection of the proportional beneficial interest in each asset pursuant to the certificates of trust for the various fund subaccounts.

d. Beneficial interests assigned by certificates of trust shall be in the same amount as the accepted fair market value of the assets, which shall exclude any fees, charges, or expense reimbursements provided in section 6 of P.L. , c. (C. )(pending before the Legislature as this bill) and exclude amounts deposited to the investment account from, or associated with, the conveyed asset. The certificates of trust shall be issued to, or for the benefit of, the State-administered retirement system pursuant to written agreement. If the agreement designates more than one State-administered retirement system as the intended beneficiary of the transfer, the agreement shall also apportion the fund interest among them, and the fund interest shall be issued to, or for the benefit of, them in such proportion.

11. Section 3 of P.L.2015, c.18 (C.58:30-3) is amended to read as follows:

3. As used in this act,

“Administrator” means a person or an entity, including the New Jersey Infrastructure Bank, as permitted under section 503 of the federal Internal Revenue Code (26 U.S.C. s.503), that the board shall retain, appoint or procure, to administer the affairs of the fund as a fiduciary and subject to and under the supervision of the board.

“360 review” means a comprehensive analysis that includes an assessment of a public entity’s fiscal condition, an inventory of asset optimization opportunities as established in section 6 of P.L.    , c.    (C. )(pending before the Legislature as this bill), and an initial due diligence review of any public asset proposed for conveyance to the New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund, established pursuant to section 3 of P.L. , c. (C. )(pending before the Legislature as this bill).

"Board" means the Board of Public Utilities.

"Capable private or public entity" means any private or public water system owner who, at the time of submitting a proposal to long-term lease or purchase public water or wastewater assets, currently (1) owns a system serving no less than the number of residential and commercial accounts as the system which the entity is proposing to lease or purchase, and (2) is not a significant noncomplier, as defined pursuant to section 3 of P.L.1977, c.7 (C.58:10A-3), is not currently the subject of a formal enforcement action initiated by the New Jersey Department of Environmental Protection to address a material violation by the entity which has not been corrected over a reasonable period of time given the specific situation, or is not substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement or judicial consent order entered into with the department. The term shall also mean and include the New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund, established pursuant to section 3 of P.L. , c. (C. )(pending before the Legislature as this bill).

"Department" means the Department of Environmental Protection.

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Governing body" means a "governing body" as defined in section 3 of the "New Jersey Wastewater Treatment Public-Private Contracting Act," P.L.1995, c.216 (C.58:27-19 through C.58:27-27).

"Licensed engineer" means a professional engineer licensed pursuant to P.L.1938, c.342 (C.45:8-27 et seq.).

"Long-term lease" means a lease of longer than 30 years under which the municipal owner seeks to transfer ownership of the system at the end of the lease term.

"Owner" means any municipality, except a municipality that is a city of the first class with a population of 270,000 or more according to the latest federal decennial census, that owns water or wastewater assets. Municipalities constituting a joint meeting, and the joint meeting itself shall not be considered an owner for the purposes of this definition.

“Qualified independent valuation agent” means an entity or person who is (1) accredited by the American Society of Appraisers to conduct appraisals or (2) an investment bank, trust company, accountant, engineer, or financial advisor qualified to perform fair market valuations of public assets or render fairness opinions on the valuation of public assets; and who is independent of the public entity making, and the trust fund receiving, a conveyance of one or more public assets.

"Registered apprenticeship program" means an apprenticeship program registered with and approved by the United States Department of Labor and which provides to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, and which meets the program performance standards of enrollment and graduation under 29 C.F.R. s.29.6.

"System" means the plants, structures, and other real and personal property of an owner that is, or is to be, acquired, constructed, or operated for the purpose of processing water or wastewater, including sewage, for distribution or treatment.

"Water or wastewater assets" means any system along with any other related buildings, equipment, or other infrastructure.

(cf: P.L.2015, c.18, s.3)

12. Section 5 of P.L.2015, c.18 (C.58:30-5) is amended to read as follows:

5. a. The determination that emergent conditions exist shall be made by certification of the mayor, the mayor's designee of the municipality, and a licensed engineer.

b. Emergent conditions shall exist if at least one of the following conditions is met:

(1) The system is located in an area designated by the Department of Environmental Protection as an Area of Critical Water Supply Concern I or II, or any future designation or newly added area of critical water supply concern;

(2) The owner of the system is a significant noncomplier, as defined pursuant to section 3 of P.L.1977, c.7 (C.58:10A-3), has been the subject of a formal enforcement action initiated by the department, or is substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement, or judicial consent order entered into with the department; or

(3) There is a present deficiency or violation of maximum contaminant levels established pursuant to the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), concerning the availability or potability of water, or concerning the provision of water at adequate volume or pressure, or distribution or treatment of wastewater;

(4) There is a demonstrated lack of historical investment, repair, or sustainable maintenance as determined by the department, or material damage to the infrastructure of the system; or

(5) The system owner lacks the financial, technical, or managerial capacity to adequately address any of the foregoing on a sustainable basis or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis.

c. Should the owner determine that one or more emergent conditions contained in subsection b. of this section exists and that it is necessary to take steps to effectuate the sale or long-term lease of its water or wastewater assets to a capable private or public entity pursuant to this act to address these emergent conditions and to operate and maintain the system, the owner shall: (1) through the utilization of applicable public procurement laws of the State of New Jersey retain the services of an independent financial advisor to review, analyze and report on the value of the system and the short and long term impacts to rate-payers of the cash-flow structure of the proposed transaction and to provide an estimate as to the financial requirements necessary to address the emergent conditions and to operate and maintain the system. Upon completion of the analysis and review, the independent financial advisor shall transmit its report to the owner; or (2) contact the administrator of the New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund and propose an asset conveyance pursuant to section 7 of P.L. , c. (C. )(pending before the Legislature as this bill). Within 10 days of the approval of the report **[**by the owner**]** issued pursuant to this section, the owner shall transmit copies to the board, the director, and the department and shall make the report available for public review.

d. After the independent financial advisor, or administrator, has completed its analysis of the financial aspects of the proposed transaction and has presented its report to the owner, a public hearing on the proposed emergent condition certification shall be held. The owner shall provide notice of the public hearing no less than 30 days prior to the date of the hearing. The notice shall prominently state the findings upon which the certification of emergent conditions is based, a summary of the findings by the independent financial advisor, or administrator, and that the certification is in anticipation of a proposed long-term lease or sale of water or wastewater assets to a capable private or public entity. Notice of the public hearing shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality. Notice of the public hearing shall be published on the official Internet website of the county and at least once in one or more newspapers circulating in the county. If an applicable official website does not exist, notice of the public hearing shall be published on the official Internet website of the Department of Community Affairs.

e. After the public hearing and after giving due consideration to the findings of the independent financial advisor or administrator, the governing body of the owner shall, by resolution adopted by at least two-thirds of its authorized membership, or, with respect to an asset conveyance to the Infrastructure Capital Asset Reassignment Enterprise Fund, adopted by a majority of its authorized membership, certify that one or more emergent conditions exist and that the owner intends to sell or long-term lease its water or wastewater assets to a capable private or public entity to address these emergent conditions and to operate and maintain the system. Within five days of the adoption of the resolution, the governing body of the owner shall transmit a true copy of the resolution, to the department, the board, and the director. Within 30 days of receipt of the resolution by the department, the department shall approve or reject the owner's emergent conditions certification as contained in the resolution.

f. Upon receipt of the approval of the emergent conditions certification by the Department of Environmental Protection, the owner shall publish notice of the approval if the owner chooses to proceed with the sale or long-term lease of its water or wastewater assets to a capable private or public entity. The notice shall prominently state that the certification is in anticipation of a long-term lease or sale of water or wastewater assets to a capable private or public entity. Notice of the approval shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality, and shall prominently state that a petition may be filed within 45 days after the publication of such notice to require a referendum before a resolution authorizing the long-term lease or sale of water or wastewater assets may take effect. If an applicable official website does not exist, notice of the approval shall be published on the official Internet website of the Department of Community Affairs.

g. A petition may be filed with the municipal clerk, no later than 45 days after the notice of the approval of the emergent conditions certification is published, protesting the lease or sale of water or wastewater assets without a public referendum. If the petition is signed by a number of legal voters of the municipality equal to at least 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected, a resolution to lease or sell water or wastewater assets shall not take effect unless the lease or sale of such assets is approved pursuant to R.S.40:62-4 and R.S.40:62-5. If a petition is not filed pursuant to this subsection, a resolution to lease or sell water or wastewater assets shall not be subject to a public referendum.

(cf: P.L.2015, c.18, s.5)

13. Section 6 of P.L.2015, c.18 (C.58:30-6) is amended to read as follows:

6. a. A request for qualifications from a capable private or public entity wishing to be considered for the long-term lease or sale of the owner's system shall be advertised after the emergent conditions certification pursuant to subsection e. of section 5 of P.L.2015, c.18 (C.58:30-5), but no less than 30 days prior to the date on which responses to the request are due. The advertisement of the request for qualifications shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality. An owner shall also publish the advertisement of the request for qualifications at least once in one or more newspapers with Statewide circulation. If an applicable official website does not exist, the advertisement of the request for qualifications shall be published on the official Internet website of the Department of Community Affairs.

b. After an emergent conditions certification is made pursuant to subsection e. of section 5 of P.L.2015, c.18 (C.58:30-5), the owner shall determine the qualified respondents. The owner shall issue a request for proposals to each qualified respondent no less than 14 days prior to the date established for submission of the proposals. The request for proposals shall include relevant technical submissions, documents, and criteria including but not limited to a description of the facilities and the debt related thereto and the evaluation criteria to be used in the selection of the designated respondent. The proposals shall include and shall be evaluated by, at a minimum, the following:

(1) the documented deficiencies of the owner's system upon which the emergent conditions certification is based and a description of the corrective measures to be undertaken by the respondent to address and correct the identified emergent conditions;

(2) a description of the financial, managerial, and technical capabilities of the respondent to operate and maintain the system in compliance with all applicable State and federal laws and regulations, as well as a description of all the respondent's outstanding and pending violations of the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.); P.L.1942, c.308 (C.58:11-9.1 et seq.); "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.); and the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.);

(3) an analysis of the relevant expenditures associated with such activities and the projected impact on customer rates;

(4) an analysis of any Internal Revenue Code or other tax code issues that may arise from the long-term lease or sale of a publicly funded water or wastewater asset, as well as any potential short-term or long-term costs arising there from;

(5) a long-term capital improvement or asset management plan; and

(6) any other pertinent information required of or deemed appropriate by the owner.

c. Upon a review of the proposals submitted by qualified respondents, the governing body of an owner shall, by resolution adopted by at least two-thirds of its authorized membership, designate one qualified respondent, whose proposal the governing body finds to be the most advantageous to the public, taking into consideration the evaluation criteria set forth in the request for proposals and as specified under subsection b. of this section. The resolution shall include a detailed summary of the governing body's findings that the proposal of the designated respondent is most advantageous to the public. The summary shall be published in accordance with the notification requirements of section 5 of P.L.2015, c.18 (C.58:30-5).

d. The administrator of the New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund shall not be subject to the requirements concerning qualifications and proposals in subsections a. or b. of this section.

When one of the proposals submitted by qualified respondents is from the administrator of such fund, the governing body, in deciding which proposal is most advantageous to the public under subsection c. of this section, shall consider the economic benefit accorded to the municipality and public, as determined through a 360 review, and the value of the asset conveyance against any applicable pension liabilities.

(cf: P.L.2015, c.18, s.6)

14. Section 7 of P.L.2015, c.18 (C.58:30-7) is amended to read as follows:

7. a. After the designated respondent is selected, negotiations for a contract for the lease or sale of the water or wastewater assets may commence between the owner and the designated respondent.

b. (1) Every proposed contract shall include a clause stating that to the extent it does not violate any existing collective bargaining agreements between the capable private or public entity and its employees, the capable private or public entity shall give first consideration in hiring to any public employees displaced by the long-term lease or sale of the water or waste water assets.

(2) After an agreement on a proposed contract is reached between the owner and the designated respondent, the governing body of the owner shall, by resolution adopted by at least two-thirds of its authorized membership, cause the proposed contract to be submitted to the board for approval and cause the proposed use of proceeds of the long-term lease or sale to be submitted to the director for approval.

c. (1) The proposed contract submitted to the board shall include the rent or sale price, any appraisals supporting the rent or sale price, documentation regarding the defeasance of debt, and any other information requested by the board. The board shall approve or reject the proposed contract within 90 days of receipt thereof. If no disposition is made within 90 days, the proposed contract shall be deemed approved.

(2) For the purposes of rate making and recovery, the board shall accept the negotiated sale price between the owner and the designated respondent as the new rate base effective as of the date of the approval of the long-term lease or sale, as may be the case, provided the price is deemed reasonable.

The rent or sale price shall be deemed reasonable if it meets the following conditions:

(a) The rent or sale price is sufficient to defease the debt of the owner; and either

(b)(i) The rent or sale price is within the range of any appraisals obtained with respect to the long-term lease or sale of the water or wastewater assets; or

(ii) If there is little or no established rate base for the water or wastewater assets, the rent or sale price is reasonably comparable to a proxy rate base equivalent to the rate base of the designated respondent.

(3) In valuing the water or wastewater assets, appraisers shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(4) In valuing the water or wastewater assets and for the purposes of rate making, the original source of funding for any part of the water or wastewater assets shall not be relevant.

(5) Reasonable and prudent transaction, closing, and transition costs incurred by the designated respondent shall be recoverable in rates.

(6) The proposed use of proceeds submitted to the director shall include the rent or sale price, the total amount required to defease debt, any costs associated with compliance with the Internal Revenue Code or other tax code that may arise from the long-term lease or sale of a publicly funded water or wastewater asset, the remaining proceeds after the defeasance of debt and Internal Revenue Service compliance costs, the amount dedicated to the following, in order of priority: compliance with the provisions of the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.); P.L.1942, c.308 (C.58:11-9.1 et seq.); "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.); and the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), any outstanding fees or fines owed by the entity to any federal, State, county or local governmental units, capital improvements, community improvements, and general purposes of the owner. The amount dedicated to capital improvements shall comply with a previously adopted long-term capital improvement plan or asset management plan, and must represent at least 50 percent of the remaining proceeds once the debt is defeased. The director shall approve or reject the proposed use of proceeds within 30 days of receipt thereof. If no disposition is made within 30 days, the proposed use of proceeds shall be deemed approved.

d. The New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund shall not be subject to the requirements in this section for sale or lease of an asset.

(cf: P.L.2015, c.18, s.7)

15. There shall be appropriated from the General Fund to the New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund the sum of $20,000,000 for the operating and administrative expenses of the fund and for the performance by the administrator and the board of their responsibilities hereunder.

16. This act shall take effect immediately.

STATEMENT

This bill, known as the “New Jersey Infrastructure Capital Asset Reassignment Enterprise Fund Act”, establishes a trust fund for the conveyance of certain assets for the benefit of the State-administered retirement systems.

The fund, known as the Infrastructure Capital Asset Reassignment Enterprise (ICARE) Fund, is established as an instrumentality of the State to exercise public and essential governmental functions.

The purpose of the fund is to lessen the burdens of government by providing a fund through which a public entity may contribute, transfer or sell its revenue-producing assets, to a segregated or commingled account and share the risks and benefits of the performance of those assets, to maximize the performance and long-term value of those assets and to benefit the public entity.

The fund will be administered by an Administrator retained, appointed, or procured by the Infrastructure Capital Asset Reassignment Enterprise Fund. The assets of the fund will be maintained as a separate account segregated from all other funds of the State, the administrator and the non-State public employers participating in State-administered retirement systems. The fund will be legally independent and separate, regardless of its treatment for tax, accounting, reporting, securities law, or other purposes.

No person will use or authorize the use of the assets in the fund, or the investment earnings, for any purpose other than for the maximization of the value of the assets in the fund, including meeting or exceeding the level of service required to operate the asset pursuant to State and federal law and regulations for the safety of the public and the environment, and for the benefit of members and retirees in the State-administered retirement systems, and for the reasonable costs of administering the fund.

The ICARE Fund will have a board of five members as follows: a member of the New Jersey Infrastructure Bank, a member of the Division of Investments or their designee, who will serve ex officio, and three members of the public appointed by the Governor. Members appointed by the Governor should have experience and expertise in ERISA law and laws governing public pension plans, experience and expertise in pension finance or experience and expertise in the construction trades.

Each public member will be appointed for a term of three years, with staggered terms. Members will remain active until their successor is qualified. The chairperson will be determined by the Governor and the director of the Division of Investment will serve as treasurer of the board and as vice chairperson of the board. The position of secretary will be elected from among the three public members of the board. The term for secretary will be three years.

The board will be constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the board of the powers conferred by this bill will be deemed and held to be an essential governmental function of the State.

The members of the ICARE Fund will serve without compensation, but the fund will reimburse the members for actual and necessary expenses incurred in the performance of their duties

The bill establishes an advisory committee to the board comprised of each municipality or county which is a benefitting public entity. The advisory committee members will serve for two years. Members of the advisory committee will be appointed by the secretary of the board upon the recommendation from the executive of the public entity. All public information that is distributed to board members relative to board meetings will also be provided simultaneously to the advisory committee members. The purpose of the advisory committee is to provide the board with advice and information relevant to local systems. The advisory committee will not have any voting or veto authority over the board. The advisory committee members will receive no compensation.

The fund administrator will have a fiduciary duty to maximize the value of an asset over the long-term, to the holders of certificates of trust issued pursuant to this bill. The administrator will ensure that each asset meets or exceeds the level of service required to operate the asset pursuant to State and federal law and regulations for the safety of the public and the environment.

The bill provides that a public entity may convey to the fund an asset held by the public entity. The conveyance will be governed by a transfer agreement, which will be proposed by the administrator, in consultation with the board, and approved by the public entity. Only that portion of the conveyed asset that is net of financing costs and amounts deposited into the investment account or other distributions made to, or on behalf of the public entity will be evidenced by certificates of trust and credited to the holding account of the Common Pension Fund as provided by this bill. Asset contributions on behalf of the public entity and the fund’s asset distributions will be deposited in the investment account of the Common Pension Fund.

The State-administered retirement systems will not be required or permitted to pay any expenses incurred in connection with the conveyance of an asset pursuant to this act.

An asset proposed for conveyance to the fund will be valued by an independent valuation agent and be revalued periodically. The valuation agent will issue a report representing its opinion as to the valuation of the asset in accordance with an asset conveyance. An asset conveyance will not be effectuated until after the report has been issued and both the fund manager, upon approval from the board, and the public entity or non-public entity accept the proposed value. If either rejects the proposed value, the conveyance will not be effectuated, and any written agreement for the conveyance of an asset will be void.

The bill amends the “Water Infrastructure Protection Act,” to allow a municipality with a water or wastewater asset under emergent conditions to include conveyance of the asset to the fund as an option under that law.

The bill appropriates $20,000,000 to the ICARE fund for the operating and administrative expenses of the fund and for the performance by the administrator and the board of their responsibilities.