

SENATE, No. 2381

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JANUARY 29, 2024

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

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.



1 AN ACT concerning the conveyance of certain assets to a trust fund
2 for the benefit of the State-administered retirement systems,
3 creating the New Jersey Infrastructure Capital Asset
4 Reassignment Enterprise Fund, amending and supplementing
5 various parts of the statutory law, and making an appropriation.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 1. (New section) This act shall be known and may be cited as
11 the “New Jersey Infrastructure Capital Asset Reassignment
12 Enterprise Fund Act.”
13

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

16 “360 review” means a comprehensive analysis that includes an
17 assessment of a public entity’s fiscal condition, pursuant to section
18 6 of P.L. , c. (C.)(pending before the Legislature as this
19 bill).

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

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

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

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

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

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 underlined thus is new matter.

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

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

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

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

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

26 “Special asset” means the fund assets, including the holding
27 account but excluding the investment account.
28

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

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

44 The purpose of the fund shall include, but may not be limited to,
45 lessening the burdens of government by providing a fund through
46 which a public entity may contribute, transfer, or sell its revenue-
47 producing assets to a segregated or commingled account and share
48 the risks and benefits of the performance of those assets, to

1 maximize the performance and long-term value of those assets,
2 which value shall be known as the special asset value of the
3 conveyed assets and shall act to increase the pension funded ratio of
4 the benefitting public entity. Collectively, the special asset value of
5 all assets held by the fund shall be known as the fund's special asset
6 value.

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

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

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

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

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

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

1 Legislature as this bill). Whereas the fund's asset distributions, net
2 of financing costs and any distributions to, or on behalf of the
3 public entity, shall be deposited into the investment account of the
4 Common Pension Fund as provided in section 9 of
5 P.L. , c. (C.)(pending before the Legislature as this bill).

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

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

16

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

43 b. The members of the Infrastructure Capital Asset
44 Reassignment Enterprise Fund shall serve without compensation,
45 but the fund shall reimburse the members for actual and necessary
46 expenses incurred in the performance of their duties.
47 Notwithstanding the provisions of any other law to the contrary, no
48 officer or employee of the State shall be deemed to have forfeited or

1 shall forfeit the officer's or employee's office or employment or any
2 benefits or emoluments thereof by reason of the officer's or
3 employee's acceptance of the office of ex officio director of the
4 fund or the ex officio director's services thereon.

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

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

11 (2) adopt an official seal and alter it;

12 (3) sue and be sued;

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

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

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

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

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

44 (9) borrow money, issue bonds, notes and other obligations,
45 securing the same, and provide for the rights of the holders thereof.
46 May, as legally permissible, pledge assets of the fund as security for
47 such bonds, notes and other obligations, for any of the following
48 purposes: paying the costs of acquiring, constructing, renovating,

1 equipping, expanding, improving, or operating the assets of, or
2 assets to be transferred to, the fund; paying expenses incident to or
3 incurred in connection therewith; facilitating the transfer of any
4 asset to the fund, including but not limited to, the refinance,
5 extension, or reissuance of debt of the asset in the name of the fund;

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

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

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

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

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

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

44 (16) subject to any agreement with holders of its bonds, notes or
45 other obligations, obtain as security or to provide liquidity for
46 payment of all or any part of the principal of and interest and
47 premium on the bonds, notes and other obligations of the
48 Infrastructure Capital Asset Reassignment Enterprise Fund or for

1 the purchase upon tender or otherwise of the bonds, notes or other
2 obligations, lines of credit, letters of credit and other security
3 agreements or instruments in any amounts and upon any terms as
4 the Infrastructure Capital Asset Reassignment Enterprise Fund may
5 determine, and pay any fees and expenses required in connection
6 therewith; and

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

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

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

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

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

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

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

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

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

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

23 (8) meet at least once per calendar year.

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

36 g. The advisory committee members shall receive no
37 compensation.

38
39 5. (New section) a. The administrator shall have a fiduciary
40 duty, which shall include maximization of the value of an asset over
41 the long-term, to the holders of certificates of trust issued pursuant
42 to this act, P.L. , c. (C.)(pending before the Legislature as
43 this bill). The administrator shall take any necessary action to
44 protect the rights of the holders of certificates of trust and shall, in
45 exercising the duties and responsibilities under this section, be
46 liable for breach of a duty arising from
47 P.L. , c. (C.)(pending before the Legislature as this bill).
48 The administrator shall ensure that each asset meets or exceeds the

1 level of service required to operate the asset pursuant to State and
2 federal law and regulations for the safety of the public and the
3 environment.

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

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

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

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

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

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

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

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

16 b. The report shall include, as appropriate:

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

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

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

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

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

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

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

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

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

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

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

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

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

24
25 7. (New section) a. A public entity may convey to the fund an
26 asset held by the public entity. The conveyance shall be governed
27 by a transfer agreement, which shall be proposed by the
28 administrator, in consultation with the board, and approved by the
29 governing body of the public entity as evidenced by a resolution
30 adopted by a majority of its authorized membership.

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

43 Asset contributions on behalf of the public entity and the fund's
44 asset distributions shall be deposited in the investment account of
45 the Common Pension Fund as provided in section 9
46 of P.L. , c. (C.)(pending before the Legislature as this bill).
47 The fund's asset distributions shall be from cash and investments
48 deemed to be more than amounts required for proper operations,

1 capital investment, and administration of the conveyed asset, and
2 may include, but shall not be limited to, asset conveyance amounts
3 net of financing costs, debt obligations and other liabilities secured
4 by, or payable from, the conveyed asset, and any distribution to, or
5 on behalf of the public entity, and investment income, proceeds of
6 asset sales, lease or other entitlements, and any other amounts as the
7 board may determine. These assets shall be invested and distributed
8 to the State-administered retirement systems as directed by the
9 transfer agreement for the account of the beneficial public entities.
10 The asset value contributed to the investment account shall be
11 added to the actuarial value of assets and increase assets attributable
12 to the benefitting public entity on a proportional basis. The
13 benefitting public entity's funding ratio may be calculated by the
14 sum of its actuarial value of assets, including amounts held in or
15 transferred from the investment account and the value of special
16 assets held in its holding account divided by its actuarial accrued
17 liabilities.

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

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

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

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

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

36 (4) the asset conveyance transaction is administratively feasible;

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

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

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

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

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

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

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

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

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

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

42
43 8. (New section) a. (1) An asset proposed for conveyance to,
44 or acquisition by, the fund shall be valued by an independent
45 valuation agent pursuant to paragraph (2) of this subsection, and
46 shall be revalued periodically if requested by the administrator,
47 which revaluation shall occur at least once but not more than

1 quarterly in any State fiscal year, whether discretionary or
2 otherwise, or more frequently, as deemed necessary by the board.

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

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

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

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

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

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

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

40

41 9. (New section) a. In order to receive the asset contribution
42 on behalf of the retirement systems, a Common Pension Fund is
43 hereby established within the Division of Investment in the
44 Department of the Treasury. The Common Pension Fund shall
45 constitute part of each retirement system and the participating trust
46 through which each retirement system is funded. Only the
47 retirement systems and the trusts through which they are funded
48 shall have an interest in the Common Pension Fund. The Common

1 Pension Fund shall satisfy the requirements of section 401(a)(24) of
2 the federal Internal Revenue Code of 1986 (26 U.S.C. s.401(a)(24)),
3 as amended, in accordance with Revenue Ruling 81-100, as
4 amended by Revenue Ruling 2004-67 and Revenue Ruling 2011-1,
5 and the requirements for exemption under section 501(a) of the
6 federal Internal Revenue Code of 1986 (26 U.S.C. s.501(a)), as
7 amended. Consistent with section 401(a)(24) of the federal Internal
8 Revenue Code of 1986 (26 U.S.C. s.401(a)(24)), as amended,
9 regulations of the United States Department of the Treasury, and
10 other guidance of the federal Internal Revenue Service, each
11 retirement system shall participate in the Common Pension Fund.
12 No part of the corpus or income of the Common Pension Fund that
13 equitably belongs to a retirement system or a trust of the retirement
14 system may be used for or diverted to any purpose other than for the
15 exclusive benefit of the members or beneficiaries entitled to
16 benefits under such retirement system or trust of the retirement
17 system.

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

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

38 (2) proceeds in amounts determined by the fund shall be
39 transferred from the asset holdings account to the investment
40 account on a periodic basis and such proceeds shall constitute the
41 distributions of the fund's asset. Such proceeds transferred together
42 with all investments thereof and investment earnings thereon shall
43 be available solely to and for the benefit of the retirement systems.
44 The investment account shall be managed and invested by the
45 Director of the Division of Investment pursuant to the authority,
46 responsibilities, and duties set forth in P.L.1950, c.270 (C.52:18A-
47 79 et seq.), subject to the oversight of the State Investment Council,
48 pursuant to the authority of P.L.1950, c.270 (C.52:18A-79 et seq.).

1 The Director of the Division of Investment shall have full discretion
2 to distribute proceeds and all investments thereof and investment
3 earnings thereon from the investment account into investment
4 vehicles managed by the Division of Investment on behalf of the
5 retirement systems. The investment account may be further
6 subdivided into subaccounts in the discretion of the Director of the
7 Division of Investment for purposes of investing in different types
8 of investments; and

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

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

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

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

6
7 10. (New section) a. The beneficial interests in enterprise
8 assets of the fund shall be accounted for in certificates of trust,
9 which shall outline the terms by which that beneficial interest shall
10 be realized and exercised. Certificates of trust shall be held in a
11 Common Pension Fund on behalf of the State-administered
12 retirement system.

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

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

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

46 d. Beneficial interests assigned by certificates of trust shall be in
47 the same amount as the accepted fair market value of the assets,
48 which shall exclude any fees, charges, or expense reimbursements

1 provided in section 6 of P.L. , c. (C.)(pending before the
2 Legislature as this bill) and exclude amounts deposited to the
3 investment account from, or associated with, the conveyed asset.
4 The certificates of trust shall be issued to, or for the benefit of, the
5 State-administered retirement system pursuant to written agreement.
6 If the agreement designates more than one State-administered
7 retirement system as the intended beneficiary of the transfer, the
8 agreement shall also apportion the fund interest among them, and
9 the fund interest shall be issued to, or for the benefit of, them in
10 such proportion.

11

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

14 3. As used in this act,

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

20 “360 review” means a comprehensive analysis that includes an
21 assessment of a public entity’s fiscal condition, an inventory of
22 asset optimization opportunities as established in section 6 of
23 P.L. , c. (C.)(pending before the Legislature as this bill),
24 and an initial due diligence review of any public asset proposed for
25 conveyance to the New Jersey Infrastructure Capital Asset
26 Reassignment Enterprise Fund, established pursuant to section 3 of
27 P.L. , c. (C.)(pending before the Legislature as this bill).

28 "Board" means the Board of Public Utilities.

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

47 "Department" means the Department of Environmental
48 Protection.

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

3 "Governing body" means a "governing body" as defined in
4 section 3 of the "New Jersey Wastewater Treatment Public-Private
5 Contracting Act," P.L.1995, c.216 (C.58:27-19 through C.58:27-
6 27).

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

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

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

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

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

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

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

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

41
42 12. Section 5 of P.L.2015, c.18 (C.58:30-5) is amended to read
43 as follows:

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

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

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

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

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

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

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

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

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

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

36 f. Upon receipt of the approval of the emergent conditions
37 certification by the Department of Environmental Protection, the
38 owner shall publish notice of the approval if the owner chooses to
39 proceed with the sale or long-term lease of its water or wastewater
40 assets to a capable private or public entity. The notice shall
41 prominently state that the certification is in anticipation of a long-
42 term lease or sale of water or wastewater assets to a capable private
43 or public entity. Notice of the approval shall be published on the
44 official Internet website of the municipality and at least once in one
45 or more newspapers circulating in the municipality, and shall
46 prominently state that a petition may be filed within 45 days after
47 the publication of such notice to require a referendum before a
48 resolution authorizing the long-term lease or sale of water or

1 wastewater assets may take effect. If an applicable official website
2 does not exist, notice of the approval shall be published on the
3 official Internet website of the Department of Community Affairs.

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

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

17
18 13. Section 6 of P.L.2015, c.18 (C.58:30-6) is amended to read
19 as follows:

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

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

45 (1) the documented deficiencies of the owner's system upon
46 which the emergent conditions certification is based and a
47 description of the corrective measures to be undertaken by the

1 respondent to address and correct the identified emergent
2 conditions;

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

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

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

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

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

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

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

38 When one of the proposals submitted by qualified respondents is
39 from the administrator of such fund, the governing body, in
40 deciding which proposal is most advantageous to the public under
41 subsection c. of this section, shall consider the economic benefit
42 accorded to the municipality and public, as determined through a
43 360 review, and the value of the asset conveyance against any
44 applicable pension liabilities.

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

46
47 14. Section 7 of P.L.2015, c.18 (C.58:30-7) is amended to read
48 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31
32 15. There shall be appropriated from the General Fund to the
33 New Jersey Infrastructure Capital Asset Reassignment Enterprise
34 Fund the sum of \$20,000,000 for the operating and administrative
35 expenses of the fund and for the performance by the administrator
36 and the board of their responsibilities hereunder.

37
38 16. This act shall take effect immediately.
39
40

41 STATEMENT

42
43 This bill, known as the "New Jersey Infrastructure Capital Asset
44 Reassignment Enterprise Fund Act", establishes a trust fund for the
45 conveyance of certain assets for the benefit of the State-
46 administered retirement systems.

47 The fund, known as the Infrastructure Capital Asset
48 Reassignment Enterprise (ICARE) Fund, is established as an

1 instrumentality of the State to exercise public and essential
2 governmental functions.

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

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

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

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

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

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

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

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

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

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

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

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

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

S2381 SINGLETON

29

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