ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4654

STATE OF NEW JERSEY

DATED: SEPTEMBER 17, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4654.

This bill permits a State agency to completely or partially terminate a contract or agreement concerning marine terminal or attendant real property to serve an important public purpose.

Under the bill, a State agency may, without penalty or liability, terminate a contract or agreement concerning the use, control, or access of marine terminals or real property for convenience when the impairment to the contract is reasonable and necessary to serve an important public purpose. The bill does not apply to contracts or agreements concerning the sale or transfer of real property. The bill specifies that it will not impair the right of a State agency and contracting party to mutually agree to other terms governing contract termination after the effective date of the bill.

Under the bill, a State agency must submit a written termination notice to the contracting party within 60 days of the termination date specified in the notice. The termination notice must state the purpose and the grounds for termination, the effective date of termination, the extent of termination, and any special instructions. The agency must also forward a copy of such termination notice to any known assignee, guarantor, or surety of the contracting party, if any. With consent of the contracting party, the agency may reinstate all or part of the terminated portion of the contract if there has been a determination that reinstatement is necessary or advantageous to the agency or public purpose. The bill also allows the State agency to effect a no-cost settlement in lieu of issuing a termination notice when there are no outstanding payments, debts due the agency, or obligations of the contracting party.

The bill requires the contracting party to comply with the notice and any requirements necessary to effect termination, take all reasonable measures to mitigate its disentanglement costs and expenses, and perform the continued portion of the contract. The contracting party is to submit a termination settlement proposal to the State within 30 days of receipt of the termination notice. The proposal must state its requested termination fee and any request for an equitable adjustment of price for the continued portion of the contract or agreement. If the contracting party does not submit the proposal within 30 days, the State agency may determine, based on criteria set

forth in the bill, the amount, if any, due to the contracting party and is to pay that amount to the contracting party within 90 days of transmission of the termination notice.

If the State agency and the contracting party cannot agree on the termination settlement proposal, the termination fee will be determined in accordance with the dispute resolution process set forth by the State Treasurer in regulations. The termination fee must be based upon the aggregate of the following:

(1) the fair market value, at the time of the proposed termination of the contract and as determined by an independent appraisal, of the contracting party's interest in the real property or other appropriate interest in the contract of which the contracting party is being deprived; or

pro-rated unpaid payments owed to the contracting party and the present value of unamortized capital expenditures incurred by the contracting party, excluding any costs due to a breach of the contract or agreement by the contracting party; and

(2) reasonable expenses of the contracting party incurred in the disentanglement that are not otherwise included, such as reasonable expenses relating to the termination and settlement of any subcontracts, accounting, legal, clerical and other expenses reasonably necessary for preparation of the termination settlement proposal, and storage, transportation and other incurred expenses reasonably necessary for the preservation, protection or disposition of the property that is the subject of the contract; and

(3) seven percent of the aggregate amount of the expenses described in subparagraph (2); less

(4) any unpaid amounts owing to the State agency by the contracting party under the contract or agreement.

The termination fee is the State's exclusive liability to the contracting party for terminating a contract under this bill. Payment of the termination fee is subject to and limited by appropriations and any other applicable statutory restrictions. The bill specifies that termination of a contract under this bill entered into after the effective date of this act shall not terminate any provisions of that contract or agreement governing termination fees.

The bill will take effect immediately and will apply to any contract in effect on the date of enactment unless the State Treasurer determines that the contract or agreement provides termination rights more generous or advantageous to the State agency or the State government than are provided pursuant to this act.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.