SENATE, No. 3637



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED APRIL 19, 2021

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

SYNOPSIS

“New Jersey Retirement Infrastructure Collateralized Holdings Fund Act”; creates trust fund for conveyance of certain assets for benefit of State-administered retirement systems; requires remediation of emergent conditions for certain public assets; appropriates $20,000,000.

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, requiring the remediation of emergent conditions for certain public assets, 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 “Retirement Infrastructure Collateralized Holdings (RICH) Fund Act.”

2. (New section) As used in sections 1 through 10 of 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, 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 trust fund.

“Administrator” means the New Jersey Infrastructure Bank created pursuant to section 4 of P.L1985, c.334 (C.58:11B-4).

“Asset” means title to real and personal property, leaseholds, licenses, franchises, easements, concessions, and any other right, title or interest deemed appropriate by the New Jersey Infrastructure Bank; 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, tangible or intangible, deemed appropriate by the New Jersey Infrastructure Bank under rules issued pursuant hereto.

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

“Benefitting public entity” means a public entity, including any associated public entity, that would benefit from an asset conveyance by means of a reduction in that public entity’s required contribution to a 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 Retirement Infrastructure Collateralized Holdings Fund 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.L1985, c.334 (C.58:11B-4).

“Non-public asset” means an asset, no part of which is held by a public entity.

“Public asset” means an asset held by a public entity, including public infrastructure, as that term is defined in section 10 of P.L.2014, c.63 (C.34:1B-251).

“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 university.

“Public-private partnership agreement” means an agreement entered into by a public entity and a non-public entity for the purpose of permitting the non-public entity to assume full 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 public or non-public assets or render fairness opinions on the valuation of public or non-public assets; and who is independent of the public or non-public entity making, and the trust fund receiving, a conveyance of one or more assets.

“Real property” means any or all real property, any improvements thereon, and any easements rights appertaining thereto.

“State-administered retirement systems” means the Public Employees’ Retirement System, established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), the Teachers’ Pension and Annuity Fund, established pursuant to N.J.S.18A:66-1 et seq., the State Police Retirement System, established pursuant to P.L.1965, c.89 (C.53:5A-1 et seq.) and the Judicial Retirement System, established pursuant to P.L.1973, c.140 (C.43:6A-1 et seq.).

3. (New section) a. There is established in, but not of, the Department of the Treasury a fund to be known as the Retirement Infrastructure Collateralized Holdings Fund, intended to operate consistent with section 115 of the 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 fund shall be administered by the New Jersey Infrastructure Bank. The assets of the fund shall be maintained as a separate account segregated from all other funds of the State, the bank, 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 the delivery of the level of service required pursuant to State and federal law and regulations, 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 Retirement Infrastructure Collateralized Holdings Fund Board, created pursuant to section 4 of this act, P.L. , c. (C.        ) (pending before the Legislature as this bill) shall and is authorized to 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 public and non-public 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 fund and the assets therein shall be maintained such that any bond issuance will 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, or any other arrangement deemed appropriate by the board.

c. Except as otherwise specified herein, the fund shall be exempt from the provisions of the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.), and any ordinances or resolutions adopted pursuant thereto, with respect to any asset conveyed to the fund.

4. (New section) a. The Retirement Infrastructure Collateralized Holdings Fund shall have a board, comprised of three members as follows: the chairperson of the New Jersey Infrastructure Bank, serving ex officio, the director of the Division of Investments, established pursuant to section 1 of P.L.1950, c.270 (C.52:18A-79), and one member of the public appointed by the Governor with the advice and consent of the Senate. 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 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 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), including, but not limited to, the power to enter into loans, contracts, agreements, and mortgages; to invest its funds; to sue and be sued; and to retain agents and independent contractors necessary to carry out its purposes. The board may employ such professional and clerical staff as it deems necessary and may call upon the employees of the New Jersey Infrastructure Bank and the Division of Investments for such assistance as it deems necessary and as may be available to it.

c. 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 fund 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; and

(4) meet at least once per calendar quarter.

5. (New section) a. The New Jersey Infrastructure Bank shall serve as the fund administrator of the Retirement Infrastructure Collateralized Holdings Fund, and shall carry out its powers and duties pursuant to a services agreement with the board. 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 and all 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 consult with the board prior to entering into any contract 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 may 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 sections 7 and 8 of this act, P.L. , c. (C. ) (pending before the Legislature as this bill);

(2) investing and managing the proceeds of and investment earnings on assets in the fund, and distributing 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);

(3) selling, exchanging, or re-investing the assets of the fund;

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

(5) selecting and contracting with consultants, including 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, 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 sections 7 or 8 of this act, P.L. , c. (C.        ) (pending before the Legislature as this bill);

(6) charging and collecting fees and expense reimbursements against an asset of the fund or of a public or non-public entity conveying an asset for the smooth and efficient administration of the fund. Any funds so collected, including all interest and investment income earned on these funds, must be used for the benefit of the fund; and

(7) borrowing money, issuing bonds, notes and other obligations, securing the same, and providing for the rights of the holders thereof. The administrator 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.

c. The administrator may procure an independent fund manager that shall carry out the duties and obligations set forth by the administrator and approved by the board. The fund manager shall ensure the independent performance of all duties delegated to it by the administrator, 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. 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 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.

d. 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, but not 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, which may include the fund manager, 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 explores alternate organizational structures of revenue-generating assets, which may include, but not be limited to, alternate business plans, ownership structures, engineering analysis of underlying asset conditions, monetization 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 unfunded actuarial accrued liabilities;

(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;

(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 unfunded actuarial accrued liabilities and annual employer contributions would change under various funding scenarios, including through the conveyance of public assets; and

(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.

c. The administrator shall use the report in structuring any agreement governing the conveyance by a public entity of an asset to the fund. The board shall use the report when determining whether to accept an asset or an independent valuation thereof.

d. Notwithstanding that a public entity has not sought to make an asset conveyance, the administrator may nonetheless cause a 360 review of a public entity to be conducted when:

(1) the administrator or board determines that emergent conditions, as described under section 5 of P.L.2015, c.18 (C.58:30-5), exist; or

(2) the board determines that a 360 review of a public entity with a public asset of regional or statewide significance is in the best interests of the State.

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 public entity. The transfer agreement shall apply the fair market valuation of the asset toward the payment of all or a portion of benefitting public entity’s actuarially determined employer contribution, and share of any unfunded actuarial accrued liability, to the State-administered retirement systems in proportion to the share of the public entity’s annual cash contribution to those systems. 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 will be no less favorable to the applicable retirement system than those in any transaction with a willing buyer;

(3) a retirement system will not pay any commission, fee, or other expense related to the asset conveyance transaction, other than the fee of a fund manager, associated experts, or any management or other fee or expense incurred in developing, operating, or managing the public asset, which fee shall exclude any fees, charges or expense reimbursements provided in 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 (2) of subsection e. 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; and

(2) the public entity shall, within 120 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;

(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.58:30-2) or under any other law governing applicable public-private partnership agreements, as appropriate; or

(c) propose the asset for conveyance to the New Jersey Retirement Infrastructure Collateralized Holdings Fund pursuant to subsections a. and b. of this section; and

(3) The public entity shall provide notice to the public of its decision on its official Internet website. 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 Retirement Infrastructure Collateralized Holdings Fund may not be granted by the fund to a non-public entity until after the first day of the fifth year following conveyance of the asset to the fund.

8. (New section) a. A non-public entity may convey an asset to the fund pursuant to the provisions of this act, P.L. , c. (C. ) (pending before the Legislature as this bill). 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 non-public entity. 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 section.

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

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

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

(3) a retirement system will not pay any commission, fee, or other expense related to the asset conveyance transaction, other than the fee of a fund manager, associated experts, or any management or other fee or expense incurred in developing, operating, or managing the asset, which fee shall exclude any fees, charges or expense reimbursements provided in section 6 of P.L. , c. (C.        ) (pending before the Legislature as this bill);

(4) the asset conveyance is administratively feasible;

(5) the asset conveyance 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. The administrator shall ensure that due diligence similar to that conducted pursuant to the 360 review provided in section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill), as applicable, is conducted for the conveyance of any asset by a non-public entity prior to completion of such conveyance. The administrator shall use the report generated by such due diligence in structuring any agreement governing the conveyance by a non-public entity of an asset to the fund. The board shall use the report when determining whether to accept an asset or an independent valuation thereof.

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

(2) Upon receipt of a written notice by a public or non-public entity of its intention to make an asset conveyance, 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 conveyance.

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.

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 or non-public entity accept the proposed value. If either rejects the proposed value, the conveyance shall not be effectuated, and any written agreement for the conveyance of an asset shall be void.

d. The valuation 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.

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.

e. With respect to an asset conveyance by a benefitting public entity, a participating State-administered retirement system shall prepare and submit an annual supplemental report to the administrator and to holders of a certificate of trust that are members of the State-administered retirement system providing the following information: (1) an estimate of a member benefitting public entity’s legacy pension liabilities less actuarial assets both without the value of the certificates of trust and including the value of the certificates of trust; and (2) the estimated employer contribution both without and including the anticipated cash distribution or any actuarially determined credit associated with the certificates of trust that the board, in consultation with the administrator and the Division of Investments, deems appropriate. For budgeting purposes, a benefitting public entity may apply the current year’s value of the certificates of trust to its legacy pension liabilities and employer contributions for either the current or the following year.

10. (New section) a. The beneficial interests in all assets of the fund are to be accounted for in certificates of trust, which shall outline the terms by which that beneficial interest is to be realized and exercised.

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, 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. 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 asset, 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). 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 the New Jersey Infrastructure Bank, created pursuant to section 4 of P.L1985, c.334 (C.58:11B-4).

“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 Retirement Infrastructure Collateralized Holdings 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 Retirement Infrastructure Collateralized Holdings 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 Retirement Infrastructure Collateralized Holdings 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**]** 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 haspresented 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 Retirement Infrastructure Collateralized Holdings 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 Retirement Infrastructure Collateralized Holdings 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 Retirement Infrastructure Collateralized Holdings 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 Retirement Investment Collateralized Holdings Fund $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 Retirement Infrastructure Collateralized Holdings Fund Act,” establishes a trust fund for the conveyance of certain assets for the benefit of the State-administered retirement systems and requires the remediation of emergent conditions for certain public assets.

The fund, known as the New Jersey Retirement Infrastructure Collateralized Holdings (RICH) Fund, is established in but not of the Department of the Treasury and is intended to operate as a trust. The fund and its assets are to be maintained as a separate account segregated from all other funds of the State, the bank, and the non-State public employers participating in State-administered retirement systems. Beneficial ownership of fund assets will be determined pursuant to certificates of trust issued to the State-administered retirement systems, and a certificate holder may sell or convey its beneficial interest to other entities, in consultation with the administrator and the board for certain purposes.

The fund will be administered by the New Jersey Infrastructure Bank and will have a board comprised of the chairperson of the New Jersey Infrastructure Bank, the director of the Division of Investments, and one member of the public appointed by the Governor with the advice and consent of the Senate. The board is required to meet every calendar quarter and is to act as a fund fiduciary.

The bill permits the conveyance to the fund of assets by both public and non-public entities, which conveyance will be governed by an asset transfer agreement. For public entities, the administrator will retain a vendor to conduct a 360 review of the public entity, which will include:

(1) a credit and financial analysis to compare the public entity’s current fiscal condition and fiscal projections against the projected fiscal condition of the public entity with optimized assets and liabilities;

(2) an enterprise asset optimization analysis that explores alternate organizational structures of revenue-generating assets;

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

(4) a liability optimization analysis that examines current and future liabilities of the public entity and various alternatives to address those liabilities.

The administrator will use the report to structure an agreement governing the asset conveyance, and the board will use the report when determining whether to accept an asset or its independent valuation. The fair market valuation of the asset will be applied toward the payment of all or a portion of the public entity’s actuarially determined employer contribution, and share of any unfunded actuarial accrued liability, to the State-administered retirement systems in proportion to the share of the public entity’s annual cash contribution to those systems. The State-administered retirement systems will not be required or permitted to pay any expenses incurred in connection with the conveyance of an asset under the bill.

Even if a public entity has not sought to make an asset conveyance, the administrator may nonetheless cause a 360 review of a public entity to be conducted when:

(1) the administrator or board determines that emergent conditions exist; or

(2) the board determines that a 360 review of a public entity with a public asset of regional or statewide significance is in the best interests of the State.

For a non-public entity, the fund administrator will ensure that due diligence similar the 360 review is conducted prior to completion of the conveyance.

For conveyances by both public and non-public entities, the fund administrator is required to procure a qualified independent valuation agent to conduct a valuation of the asset, and the asset must be revalued periodically and at least once every year. An asset conveyance cannot be effectuated until a valuation report has been issued and both the administrator, upon approval from the board, and the public entity or non-public entity accept the proposed value.

Finally, the bill amends the “Water Infrastructure Protection Act,” N.J.S.A.58:30-1 et seq., to allow a municipality with a water or wastewater asset under emergent conditions to include conveyance of the asset to the RICH fund as an option under that law.

The bill appropriates $20,000,000 for the operating and administrative expenses of the New Jersey Retirement Investment Collateralized Holdings Fund and for the performance by the administrator and the board of their responsibilities hereunder.