

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1566

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 2012

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1566 (1R), with committee amendments.

As amended, this bill, the "New Jersey Residential Foreclosure Transformation Act," establishes the "New Jersey Foreclosure Relief Corporation" as a temporary entity within the New Jersey Housing and Mortgage Finance Agency (HMFA) for the purpose of purchasing foreclosed residential properties from institutional lenders and dedicating them for occupancy as affordable housing. The corporation would cease its operations on December 31, 2017. On that date, any assets, properties, or funds held by the corporation would transfer to the HMFA.

As established, the corporation would be governed by a seven-member board, consisting of the Commissioner of Community Affairs, the Executive Director of the New Jersey Housing and Mortgage Finance Agency, the Commissioner of Banking and Insurance, and the State Treasurer, ex officio, and three New Jersey residents, appointed by the Governor, who have knowledge in the areas of real estate, housing design, construction, or operation; mortgage banking, finance, and foreclosure; or community development. The Senate President and the Speaker of the General Assembly would each nominate one member for appointment by the Governor.

The corporation would make an annual report of its activities to the Governor and to the Legislature, setting forth a complete operating and financial statement covering its operations, transactions, and holdings during the year. The corporation's books and accounts would be audited at least once in each year by certified public accountants.

The bill empowers the corporation to purchase foreclosed residential property and mortgage assets from institutional lenders in order to produce affordable housing and dedicate it as such for 30 years. The bill directs the corporation to enter into contracts or loans, or both, with no more than two experienced, financially sophisticated, community development financial institutions to enhance the ability of the corporation to fulfill its purpose of producing affordable housing.

The corporation or, if applicable, one of its contractors, would give the municipality in which the property is located a right of first refusal to purchase the property and dedicate it as affordable housing. A municipality may exercise its right to purchase and dedicate eligible property for affordable housing, decline the option to purchase, or decline to exercise the option but, instead, authorize the corporation or its contractors to use monies from the municipality's affordable housing trust fund to purchase the property.

Whenever a municipality does not exercise its right of first refusal to purchase a property, the corporation may purchase the property and convey it for occupancy as affordable housing subject to a 30-year deed restriction to another public agency, a community development corporation, a developer, or a qualifying household.

Whenever the corporation, its contractors or a municipality purchases an eligible property from monies deposited in a municipality's affordable housing trust fund, the municipality would receive bonus credits toward any constitutionally-imposed obligation to provide affordable housing as follows: two units of credit for each eligible property sold or conveyed as a for-sale unit or leased as rental housing; two units of credit for each unit of affordable housing dedicated for permanent supportive housing, other than supportive shared living housing; and one and one-quarter units of credit for each new bedroom dedicated in supportive shared living housing. The bill awards municipalities additional units of credit, above the actual number of dedicated affordable housing units produced, as an incentive for municipalities to authorize the use of their affordable housing trust fund monies for the purchase of eligible properties and to dedicate them as affordable housing.

As amended, the bill further provides that the number of additional units of credit that a municipality can receive towards its affordable housing obligation for property purchased and dedicated as affordable housing under the bill cannot exceed 25 percent of the municipality's affordable housing obligation. The amendments also specify that a municipality cannot receive both additional units of credit for producing a unit of affordable housing under this bill, and additional units of credit for that unit under another provision of law.

The bill establishes a mechanism through which a "foreclosure-impacted municipality," one that has 10 or more foreclosed homes listed on a multiple listing service for at least 60 days, can insulate its affordable housing trust funds from the laws that will require the transfer of its trust fund monies to the "New Jersey Affordable Housing Trust Fund." As amended, a foreclosure-impacted municipality can accomplish this by adopting a resolution committing the expenditure of its municipal affordable housing trust fund monies for the production of affordable housing and authorizing the transfer of at least \$150,000 of its municipal affordable housing trust fund monies

to the corporation for the corporation to use to produce affordable housing.

As amended, the corporation must use funds transferred from a foreclosure-impacted municipality to produce affordable housing within that municipality. If the corporation is unable to use all of the transferred funds within two years of the date of transfer, the corporation would return the remaining funds to the municipality and the municipality would have at least six months from the date the funds are returned to commit the funds in accordance with other provisions of law. During this time period, all municipal trust fund monies designated for the purchase of foreclosed properties would be protected from transfer to the State. A municipality would receive bonus credits, as otherwise provided in the bill, for affordable housing produced by the corporation or by one of its contractors pursuant to this mechanism.

The bill would allow the corporation to establish criteria to identify the circumstances when the purchase, sale, lease, or conveyance of market-rate units furthers the purposes of the corporation. The corporation itself, or through its contractors, would be able to purchase, sell, lease, or convey market-rate units in accordance with those criteria without imposing affordability controls upon the property as long as the transaction does not violate the terms of any other provision of law or requirement.

The bill establishes the "Foreclosure to Affordable Housing Transformation Fund," a nonlapsing, revolving fund to serve as the repository for funds appropriated or otherwise made available for the corporation to fulfill its purposes. The HMFA would administer the fund and would be authorized to transfer into the fund any amounts it has that may be used for the production of affordable housing. The bill authorizes HMFA to issue bonds to fund the activities of the corporation. The bill calls for prioritization of the allocation of tax-exempt private activity bonds in order to allow the corporation to fulfill the purposes of the bill.

Under the bill, in any year in which the proceeds from the Realty Transfer Fee additional fee, paid pursuant to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), exceeds \$75 million, the first \$10 million above the \$75 million collected will be transferred into the "Foreclosure to Affordable Housing Transformation Fund" for the purposes of the production of affordable housing. The bill authorizes the Commissioner of Community Affairs to transfer into the fund certain amounts held for the production of affordable housing, including but not limited to monies deposited in the "New Jersey Affordable Housing Trust Fund."

The bill provides that amounts deposited in the fund that are derived from federal funding sources or are otherwise dedicated to the production of affordable housing must be used for the production of affordable housing. However, the bill allows the corporation to use

other funds for the production of affordable housing or market-rate housing and allows the corporation to use annually up to three percent of fund monies for administrative cost.

Finally, the bill, as amended, would authorize lenders to bring summary actions to foreclose mortgages on vacant and abandoned residential property. In order to secure entry of a foreclosure judgment, the lender would have to follow procedures in addition to those set out in the "Fair Foreclosure Act" and the Rules of Court. The court may enter a final residential mortgage foreclosure judgment under the bill, as amended if it finds, by clear and convincing evidence, that the residential property is vacant and abandoned and that a review of the pleadings and documents filed with the court supports the entry of a final judgment. The bill precludes a court from entering a final residential mortgage foreclosure judgment if the court finds that the property is not vacant or abandoned, or the mortgagor or any other defendant has filed an answer, appearance or other written objection asserting defenses or objections that preclude the court from entering final judgment. The bill states that this new summary action is not intended to supersede or limit other procedures adopted by the Court to resolve residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation. The bill provides that it should not be construed to affect the rights of a tenant to possession of a leasehold interest under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or any other applicable law

COMMITTEE AMENDMENTS:

Committee amendments to the bill:

- Define, for the purposes of the bill, "individuals with special needs" to mean individuals with mental illness, physical or developmental disabilities, victims of domestic violence, ex-offenders, youth aging out of foster care, disabled and homeless veterans, individuals and households who are homeless, individuals with AIDS/HIV, and individuals in other emerging special needs groups identified by State agencies. If not part of a household, individuals shall be at least 18 years of age. This definition is consistent with the definition contained in the New Jersey affordable housing regulations, N.J.A.C.5:97-1.4;
- Provide that in determining a municipality's affordable housing obligation, no unit or bedroom shall receive the additional units of credit described in the bill in addition to any other type of additional units of credit that may be available;
- Require the corporation or its contractors to use funds transferred to the New Jersey Affordable Housing Trust fund to produce affordable housing in the municipality that transferred those funds; and

- Replace a provision to establish an expedited foreclosure procedure for uncontested actions to enforce residential mortgage liens against vacant and abandoned real property with a provision authorizing summary actions to foreclose mortgages on vacant and abandoned residential property.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that enactment of this bill would have an indeterminate impact on the State, HMFA, and local governments. The State may collect an indeterminate amount of new revenues associated with the filing of motions to proceed summarily because a property is vacant and abandoned. The HMFA may experience an increase in expenditures, offset in part by the transfer of municipal affordable housing trust fund proceeds, related to the operations of the New Jersey Foreclosure Relief Corporation and the production of affordable housing. The enactment of this bill may result in redirection of monies that could be used for general affordable housing purposes towards the purchase of foreclosed properties that would be either sold or leased as affordable housing.

This legislation permits the HMFA to issue bonds, the proceeds of which would support the activities of the corporation. The bill requires the corporation and the HMFA, within 120 days after this enactment of the bill, to enter into a mutually binding funding agreement that, in part, would determine that amount of bond proceeds to be raised by the HMFA for the activities of the corporation, as well as the sources of repayment and security for the principal and interest on the debt.

The OLS is unable to estimate the amount of realty transfer fee revenues that will be transferred into the Foreclosure to Affordable Housing Transformation Fund. The realty transfer fee is sensitive to economic conditions and the slowdown in the real estate market caused by the national recession resulted in a decline in State collections of the additional fee segment of the realty transfer fee from \$109.3 million in Fiscal Year 2006 to \$40.8 million in Fiscal Year 2011. According to information provided to the OLS by the Department of the Treasury, the additional fee generated an average of \$43.3 million in revenues in Fiscal Years 2009, 2010, 2011. As of November 2011, the additional fee has generated \$18.6 million in revenues. At this rate, the State will collect \$44.7 million in additional fee revenues in Fiscal Year 2012. Because the slow economic recovery and weakness in the real estate market will continue to affect revenues generated by the additional fee, it could be several years before collections once again exceed the \$75 million threshold, permitting transfers into the Foreclosure to Affordable Housing Transformation Fund.

The OLS cannot determine the amount of municipal affordable housing trust fund monies that will be made available to support the purposes of the bill. This legislation is permissive with regard to the use of municipal affordable housing trust fund resources for the purchase of eligible properties and affordable housing production. Currently, 295 municipalities are authorized to maintain affordable housing trust funds. According to the information reported by municipalities to the Department of Community Affairs (DCA), through February 3, 2012, the Statewide balance of these trust funds is \$268.2 million. This information does not indicate the amount of funds already reserved for either existing affordable housing construction and rehabilitation projects and programs, or for affordability assistance. Municipalities are also permitted to expend not more than 20 percent of the revenues collected from development fees for administrative purposes.

Paragraph d. of N.J.S.A.52:27D-329.2 requires all affordable housing development fees to be committed for expenditure within four years from the date of collection. Paragraph b. of N.J.S.A.52:27D-329.3 requires municipalities to commit to expend collections from payments-in-lieu of construction of affordable units at a residential development site within four years from the date of collection. The DCA has clarified that N.J.S.A.52:27D-329.2(d) and 52:27D-329.3(b) require that all unspent affordable housing trust fund balances as of July 17, 2008 (the effective date of P.L.2008, c.46) must be committed for expenditure within four years from the date of collection. The remaining balances may be subject to the forfeiture provisions of the aforementioned statutes if the municipality fails to commit to expend by July 17, 2012. According to information reported to the DCA, Statewide municipal affordable housing trust balances as of July 17, 2008 totaled \$257.9 million. Of this amount, \$81.1 million has been spent, while \$183.7 million must be expended by July 17, 2012.

However, the bill permits “foreclosure-impacted municipalities” to commit the expenditure of its municipal affordable housing trust fund monies for the production of very-low income, low-income, and moderate-income housing, through the adoption of a resolution authorizing the transfer of at least \$150,000 of its municipal trust fund monies to the corporation for the production of affordable housing. If a foreclosure-impacted municipality adopts such a resolution, its affordable housing trust fund will be exempted from the requirement to transfer certain balances to the New Jersey Affordable Housing Trust Fund. Data available through DCA indicate that 130 municipalities have at least \$150,000 in affordable housing monies available to be spent by July 17, 2012. If all 130 municipalities are “foreclosure-impacted” and dedicate the required minimum of \$150,000 to the corporation, provided that these balances are not already needed for another legally authorized purpose, \$19.5 million

will be made available to the corporation for affordable housing production.