

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 1566

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 16, 2012

The Senate Economic Growth Committee reports favorably and with committee amendments Senate Bill No. 1566.

This amended bill, the "New Jersey Residential Foreclosure Transformation Act," establishes the "New Jersey Foreclosure Relief Corporation," which will be dedicated to the purpose of purchasing foreclosed residential properties from institutional lenders and dedicating them for occupancy as affordable housing. Although the Legislature has adopted various measures over the past few years that have helped families who were unable to afford to pay their home mortgages to stay in their homes, current economic realities are forcing many families to default on their mortgages. It has been reported that more than 100,000 New Jersey homeowners are dealing with foreclosures.

The residential mortgage foreclosure crisis results in numerous problems for families, for communities, for businesses, and for government. Families that have lost their homes through foreclosure need a place to live despite limited financial ability. Foreclosures are concentrated in certain, usually disadvantaged, neighborhoods. When numerous properties in a neighborhood remain vacant for a prolonged period, there is a heightened risk of the neighborhood becoming blighted. A vast number of foreclosed residential properties are owned by banks and other lenders. Maintaining this excessive inventory of deteriorating homes inhibits the ability of lenders and developers to take action to reinvigorate the economy. All of these factors exacerbate the difficulties governments face in trying to continue to provide vital services to the public.

Despite these formidable problems, the current economic climate presents our State with a unique opportunity. This amended bill will take advantage of the glut of vacant foreclosed residential properties and historically low interest rates in order to address one of the most intractable problems New Jersey faces, the creation and preservation of housing for individuals and families of limited means.

The amended bill would establish the "Foreclosure Relief Corporation" as a temporary entity within the New Jersey Housing and Mortgage Finance Agency (HMFA). 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 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.

The amended 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 provides, however, that the number of additional units of credit beyond the actual number of units of housing provided under the bill may not exceed 25% of whatever the municipality's affordable housing obligation may be.

The amended 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." A foreclosure-impacted municipality can accomplish this by adopting a resolution committing the expenditure of its municipal affordable housing trust fund monies for the purchase of foreclosed properties from the corporation and pledging, and transferring, at least \$150,000 of its municipal trust fund monies to the corporation for the corporation to use to produce affordable housing.

The corporation could use funds transferred from a foreclosure-impacted municipality for any purpose authorized under the bill but would exercise best efforts to produce affordable housing in the foreclosure-impacted 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 amended 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 amended 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 amended 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 amended 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 amended bill would establish an expedited foreclosure procedure for uncontested actions to enforce residential mortgage liens against vacant and abandoned real property. The bill sets forth standards for determining when property is vacant and abandoned, including presumptions to be used to determine whether property being occupied by tenants has been abandoned. If a residential mortgage lender's action to foreclose a mortgage on abandoned real property is uncontested, the lender would be able to file a Motion for Expedited Judgment and Sale and a declaration that the debtor has abandoned the real property, supported by affidavit. Upon a finding that the motion and affidavit are satisfactory, the Superior Court would enter final judgment in foreclosure and direct issuance of a writ of execution for the sale of the property to be held within 45 days after entry of final judgment.

The committee amendments are as follows:

- Section 3 - modify the definition of "permanent supportive housing" to make it consistent with the definition contained in New Jersey affordable housing regulations, N.J.A.C. 5:97-1.4.
- Section 4 - provide that at least one of the three members appointed to the seven-member governing board of the New Jersey Foreclosure Relief Corporation would have a New Jersey real estate license.
- Section 6 - require the corporation and the HMFA to enter into an agreement determining the target amount of bond proceeds to be raised by the HMFA for the activities of the corporation, as well as the sources of repayment of, and security for, the agency's bonds.
- Section 7 - clarify that the corporation or its contractors would be able to apply monies deposited in a municipality's affordable

housing trust fund towards the purchase price of a property if the municipality adopts a resolution authorizing the corporation or its contractors to use its trust fund monies for that purpose.

- Section 8 - clarify that a municipality would receive credit for the purchase and dedication of a foreclosed property as affordable housing whenever the property is purchase from monies deposited in the municipality's affordable housing trust fund, regardless of whether the active participant is the municipality or the corporation, or one of its contractors.
- Section 8 - provide that the number of additional units of credit beyond the actual number of units of housing provided under this bill may not exceed 25% of whatever the municipality's affordable housing obligation may be.
- Section 8 - clarify that each unit of affordable housing dedicated for permanent supportive housing, other than supportive shared living housing, would be entitled to a 2 for 1 credit. As used in this context, "unit of affordable housing" means a single living unit, such as an apartment, which contains, at a minimum, a bedroom with a bathroom and cooking facilities. This amendment clarifies the distinction between a "unit of affordable housing" and a "bedroom" in "supportive shared living housing," such as a group home, in which individuals reside in a bedroom and have access to shared living space, such as bathrooms and kitchens.
- Section 11 - authorize the HMFA to issue bonds to fund the activities of the corporation and specify that issuance of tax-exempt bonds must be consistent with the corporation allocation for tax-exempt private activity bonds.