

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2157

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 1, 2012

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2157 (1R), with committee amendments.

As amended, this bill designated as the “New Jersey Residential Foreclosure Transformation Act,” establishes the “New Jersey Foreclosure Transformation Program” as a temporary program 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 HMFA shall cease the program’s operations on December 31, 2017.

The bill empowers the HMFA 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 HMFA 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 HMFA to fulfill its purpose of producing affordable housing.

The HMFA or, if applicable, one of its contractors, would give the municipality in which the property is located a right to consent or withhold consent to the proposed purchase and dedication of the property as affordable housing and also provide the municipality 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 HMFA 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 HMFA 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. The power of the HMFA to acquire real property under the bill would be limited to

short-term purchases, of no more than 60 days, to facilitate prompt conveyance of the property 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. Every contract for the acquisition of real property entered into by the HMFA, and every deed conveying real property to the HMFA, must provide that if the HMFA holds title to the property on the 61st day after the date of the deed, all rights, title, and interest conveyed to the HMFA will automatically revert to and vest in the grantor without the necessity of any further act on the part of or on behalf of the grantor. The bill requires the HMFA to execute and deliver a confirmatory deed back to the grantor of property in the event title to the property reverts to the grantor.

Whenever the HMFA, its contractors or a municipality purchases an eligible property using monies deposited in a municipality's affordable housing trust fund, the municipality would receive two units of credit toward any Council on Affordable Housing-imposed obligation to provide affordable housing for each eligible unit of affordable housing dedicated and provided. 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.

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 and 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 ten 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 production of affordable housing and authorizing the transfer of at least \$150,000 of its municipal affordable housing trust fund monies to the HMFA for the HMFA to use to produce affordable housing.

The HMFA must use funds transferred from a foreclosure-impacted municipality to produce affordable housing within that municipality. If the HMFA is unable to use all of the transferred funds within two years of the date of transfer, the HMFA 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 HMFA or by one of its contractors pursuant to this mechanism.

The bill would allow the HMFA to establish criteria to identify the circumstances when the purchase, sale, lease, or conveyance of market-rate units furthers the purposes of the HMFA. The HMFA 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 HMFA 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 the HMFA to issue bonds to fund the activities of the program. The bill calls for prioritization of the allocation of tax-exempt private activity bonds in order to allow the HMFA to fulfill the purposes of the bill.

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

The bill includes language denoting that the bill is not to be construed to require the State to spend General Fund monies to effectuate the bill. The purpose of this provision is to ensure that if the Supreme Court of New Jersey affirms the State's authority to divert

monies from the local Affordable Trust Funds the bill would not impose the transfer of monies from the General Fund. However, if the Supreme Court of New Jersey ultimately returns local Affordable Trust Funds' monies to municipalities, this provision does not obstruct the availability of General Fund monies for the program.

The bill requires the HMFA to make an annual report on the program's activities to the Governor and the Legislature, setting forth a complete operating and financial statement covering the program's operations, transactions, and holdings during the year. The HMFA shall display the annual reports on the agency's website.

COMMITTEE AMENDMENTS:

The amendment added language to specify that the bill is not to be construed as requiring the State to spend General Fund monies to effectuate the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the enactment of Senate Bill No. 2157 (1R) would have an indeterminate impact on the State, NJHMFA, and local governments. The NJHMFA may experience an increase in expenditures, offset in part by the transfer of municipal affordable housing trust fund proceeds, related to the administration of the New Jersey Residential Foreclosure Transformation Program 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. The OLS notes that other than the dedication of certain revenues raised by the realty transfer fee, there are no specific sources of funding for the New Jersey Residential Foreclosure Transformation Program.

The OLS is unable to estimate the amount of realty transfer fee revenues that will be deposited into the Foreclosure to Affordable Housing Transformation Fund (hereinafter "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 \$42.0 million in revenues in Fiscal Years 2010, 2011, and 2012. Although realty transfer fee revenues increased by 4%, to \$42.5 million, from Fiscal Year 2011 to Fiscal Year 2012, the slow economic recovery and weakness in the real estate market will continue to affect income generated by the additional fee. Therefore, it could be several years before collections once again exceed the \$75 million threshold permitting transfers into the 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. Two hundred and ninety-five municipalities are currently authorized to maintain affordable housing trust funds. According to information reported to municipalities by the Department of Community Affairs (DCA), through June 5, 2012, the Statewide balance of these trust funds is \$252.1 million. This information does not indicate the amount of funds that are already reserved for either existing affordable housing construction and rehabilitation projects and programs or affordability assistance. Municipalities are also permitted to expend not more than 20 percent of the revenues collected from development fees for administrative purposes.

Subsection 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. Subsection 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 as of July 17, 2012, Statewide municipal affordable housing trust fund balances as of July 17, 2008 totaled \$258.2 million. Of that amount, \$128.8 million has been spent while \$142.2 million must be committed for expenditure by July 17, 2012.

However, the bill permits a “foreclosure-impacted municipality” to commit the expenditure of its municipal affordable housing trust fund monies for the purchase of foreclosed properties, from the corporation, through the adoption of a resolution pledging and transferring at least \$150,000 of its municipal trust fund monies to the corporation for the production of affordable housing. The data collected by the DCA indicate that 180 municipalities have at least \$150,000 in affordable housing monies remaining to be spent as of May 1, 2012. If all 180 municipalities are “foreclosure-impacted” and dedicate the required minimum of \$150,000 to the fund, provided that these balances are not already needed for another legally authorized purpose, \$27.0 million will be made available to the fund for affordable housing production. If a foreclosure-impacted municipality accomplishes this dedication, its affordable housing trust fund balances will be exempted from the

requirement to transfer certain balances to the New Jersey Affordable Housing Trust Fund.

The Fiscal Year 2013 Appropriations Act anticipates the receipt of an amount not to exceed \$200 million by the General Fund of monies currently held in municipal affordable housing trust funds. Budget language allows the use of these funds to support a variety of affordable housing programs in the Departments of Community Affairs, Corrections, Health and Senior Services, Human Services, and Military and Veterans Affairs that provide services to households with individuals with low and moderate incomes. If Senate Bill No. 2157 (1R) were to become law, and there is no change to the aforementioned provisions of law requiring the transfer of certain unexpended funds to the State, the number of municipalities with trust fund balances of at least \$150,000 would decline from 180 to 130. If all 130 municipalities are “foreclosure-impacted” and dedicate the required minimum of \$150,000 to the fund, provided that these balances are not already needed for another legally authorized purpose, \$19.5 million will be made available to the fund for affordable housing production. The OLS notes that the transfer of municipal affordable housing trust funds is the subject of pending litigation before the Supreme Court of New Jersey.