

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 2168

### STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JUNE 19, 2012

#### SUMMARY

- Synopsis:** Establishes the “New Jersey Residential Foreclosure Transformation Act”; provides expedited process for foreclosing abandoned residential properties.
- Type of Impact:** Indeterminate fiscal impact on State and local governments.
- Agencies Affected:** Departments of Community Affairs and the Treasury, New Jersey Housing and Mortgage Finance Agency, New Jersey Foreclosure Relief Corporation, the Judiciary and municipalities.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Fiscal Impact</b>	Indeterminate Fiscal Impact – See comments below		
<b>Local Fiscal Impact</b>	Indeterminate Fiscal Impact – See comments below		

- The Office of Legislative Services (OLS) concludes that the enactment of Assembly Bill No. 2168 (1R) of 2012 will have an indeterminate fiscal impact on the State and certain local governments.
- The bill may result in a shift of revenues from the New Jersey Affordable Housing Trust Fund to the Foreclosure to Affordable Housing Transformation Fund held by the New Jersey Housing and Mortgage Finance Agency (NJHMFA), by providing that up to \$10 million of additional realty transfer fee collections in excess of \$75 million be deposited in the latter.
- The NJHMFA may experience an increase in expenditures associated with the operations of the New Jersey Foreclosure Relief Corporation and the production of affordable housing. These additional expenditures may be offset by increased resources from State appropriations, transfers from municipal affordable housing trust funds, or other sources.

- This legislation authorizes the NJHMFA to issue bonds to fund certain activities of the corporation and to contract with the corporation with respect to sources of repayment of, and security for, any such bonds.
- The bill permits the transfer of municipal affordable housing trust fund monies to the New Jersey Foreclosure Relief Corporation that would otherwise be spent by those municipalities for general affordable housing purposes or transferred to the New Jersey Affordable Housing Trust Fund, for the purchase of foreclosed properties and mortgage assets that would be sold or leased as affordable housing.
- The OLS notes that municipalities are not required to commit any current or future resources to support the purposes of the bill. To the extent funds are transferred that would have been shifted to the State, the New Jersey Affordable Housing Trust Fund will lose revenue it otherwise would have received.

### **BILL DESCRIPTION**

Assembly Bill No. 2168 (1R) of 2012, the “New Jersey Residential Foreclosure Transformation Act,” establishes the New Jersey Foreclosure Relief Corporation as a temporary entity within the NJHMFA. The corporation will cease its operations on December 31, 2017 and any assets, properties, or funds held by the corporation will transfer to the NJHMFA. The bill authorizes the corporation to enter into contracts with no more than two qualified community development financial institutions 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. A municipality in which an eligible property is located would be given the right of first refusal to purchase the property and set it aside as affordable housing. If a municipality chooses not to purchase the eligible property, the corporation may do so instead and convey it for occupancy as affordable housing, subject to a 30-year deed restriction, to another public housing agency, community development corporation, a developer, or a qualifying household. Whenever the municipality, corporation, or contractor uses monies in the municipal affordable housing trust fund to purchase a foreclosed property, the municipality will receive additional credits, up to 25 percent of the total, towards its affordable housing obligation, but no unit of affordable housing or bedroom shall receive these additional units of credit in addition to any other type of additional units of credit they may be available.

The bill permits the corporation, or its contractors, if authorized by municipal resolution, to use monies deposited in the municipality’s affordable housing trust fund to purchase an eligible property. It also establishes the Foreclosure to Affordable Housing Transformation Fund as a nonlapsing revolving fund of the NJHMFA to serve as a repository for funds appropriated or otherwise made available for the corporation to fulfill its purposes. A foreclosure-impacted municipality would be permitted to protect certain affordable housing trust fund balances from forfeiture to the State by committing a minimum of \$150,000 of those monies to the foreclosure fund for the purchase of foreclosed properties from the corporation and the production of affordable housing within the municipality transferring the funds. The bill also provides that when revenues generated by the additional fee segment of the realty transfer fee exceed \$75 million, up to the first \$10 million above that amount will be transferred into the fund. The Commissioner of Community Affairs may transfer into the fund certain monies held for the production of affordable housing, including but not limited to amounts deposited in the New

Jersey Affordable Housing Trust Fund, and federal funds. The corporation may use up to three percent of fund monies for administrative purposes.

Finally, this bill creates an expedited foreclosure procedure for uncontested actions to enforce residential mortgage liens against vacant and abandoned real property. If a residential mortgage lender's action to foreclose a mortgage on abandoned real property is uncontested, the lender may 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 to the sheriff of the county in which the property is located, or to a receiver appointed by the court, for the sale of the property within 45 days of entry of final judgment. The bill sets forth standards for determining when property is vacant and abandoned.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the enactment of Assembly Bill No. 2168 (1R) would have an indeterminate impact on the State, the NJHMFA, and local governments. The State may collect an indeterminate amount of new revenues associated with the filing of Motions for Expedited Judgment and Sale. The NJHMFA 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 the 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 also permits the NJHMFA to issue bonds, the proceeds of which would support the activities of the corporation. The bill requires the corporation and the NJHMFA, within 120 days after the enactment of the bill, to enter into a mutually binding funding agreement that, in part, would determine the amount of bond proceeds to be raised by the NJHMFA 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 deposited 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, and 2011. As of March 2012, the additional fee segment has generated \$30.3 million revenues. At this rate, the State will collect \$40.5 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. Two hundred and ninety-five municipalities are currently authorized to maintain affordable housing trust funds. According to information reported by municipalities to 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 sites within four years from the date of collection. The DCA has clarified that N.J.S.A.52:27D-329.2(d) and N.J.S.A.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 fund balances as of July 17, 2008 totaled \$258.3 million. Of that amount, \$106.1 million of these monies have been spent while \$161.3 million must be committed for expenditure by July 17, 2012.

The bill permits, however, 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 June 5, 2012. If all 180 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, \$27 million will be made available to the corporation 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 Proposed Budget 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. A recommended budget language provision allows the use of these funds to support a variety of affordable housing programs in the DCA, 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 Assembly Bill No. 2168 (1R) were to become law, and there is no change to the aforementioned statutory provisions 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 126. If all 126 municipalities are “foreclosure-impacted” and dedicate the required minimum of \$150,000 to the corporation, provided that

these balances are not already need for another legally authorized purpose, \$18.9 million will be made available to the corporation for affordable housing production.

*Section: Local Government*

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).