

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2157

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: OCTOBER 11, 2012

SUMMARY

Synopsis: Establishes the “New Jersey Residential Foreclosure Transformation Act.”

Indeterminate fiscal impact on the State and local governments.

Agencies Affected: Departments of Community Affairs and the Treasury; New Jersey Housing and Mortgage Finance Agency; and municipalities.

Office of Legislative Services Estimate

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

- The Office of Legislative Services (OLS) concludes that the enactment of Senate Bill No. 2157 (2R) will have an indeterminate fiscal impact on the State and certain local governments.
- Under certain circumstances, the implementation of this legislation could result in a shift of \$19.5 million to \$27.5 million from the General Fund, where it would support Fiscal Year 2013 appropriations, to the “Foreclosure to Affordable Housing Transformation Fund.”
- 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 \$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 administration of the “New Jersey Foreclosure Transformation Program” 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, and other sources.

- The bill permits the transfer of municipal affordable housing trust fund monies to the “Foreclosure to Affordable Housing Transformation Fund” 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 that 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

Senate Bill No. 2157 (2R), the “New Jersey Residential Foreclosure Transformation Act,” establishes the “New Jersey Foreclosure Transformation Program” as a temporary program within the NJHMFA. The bill authorizes the NJHMFA to enter into contracts with no more than two experienced, sophisticated community development financial institutions to purchase foreclosed residential property and mortgage assets from institutional lenders in order to produce it as affordable housing. The program’s operations will cease on December 31, 2017 and any assets, liabilities, properties, or funds held by the agency will transfer to other authorized programs operated by the NJHMFA.

When the NJHMFA or one of its contractors purchases an eligible property, the municipality is given 45 days to either consent or withhold consent to the proposed purchase and dedication of a property for affordable housing. The municipality may choose to purchase the eligible property in lieu of the agency or contractor and, within 60 days, must convey it for occupancy as affordable housing, subject to a 30-year deed restriction, to another public housing agency, a community development corporation, a developer, or a qualifying household. If the NJHMFA holds title to the property on the 61st day after the date of the deed, ownership would automatically revert back to the seller. The bill is silent with regard to whether or not the seller is required to refund the amount paid for the property to the agency or contractor. Presumably, this would be subject to negotiation between the agency and the seller at the time of purchase. Whenever the municipality, NJHMFA, or a contractor uses monies in a 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.

The bill permits the agency or its contractors, when authorized by municipal resolution, to use moneys 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 NJHMFA to fulfill the purposes of the program. A foreclosure-impacted municipality would be permitted to protect certain affordable housing trust funds 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 fund 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, the first \$10 million will be transferred into that 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 into the “New Jersey

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

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the enactment of Senate Bill No. 2157 (2R) 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.” As amended, the bill does not require the Executive Branch to appropriate any General Fund monies to effectuate the purposes of the legislation.

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 percent, 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 existing on July 17, 2008 totaled \$258.2 million. Of that amount, \$128.8 million has been spent while \$142.2 million must have been committed for expenditure by July 17, 2012 to avoid transfer to the State.

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 each 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 (2R) 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, then 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.

Section: Local Government
Analyst: Scott A. Brodsky
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

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.).