LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 664

STATE OF NEW JERSEY
218th LEGISLATURE

DATED: MARCH 29, 2019

SUMMARY

Synopsis:	Codifies the Judiciary's Foreclosure Mediation Program; dedicates monies from foreclosure filing fees and fines.
Type of Impact:	Annual State revenue and expenditure increases, General Fund.
Agencies Affected:	The Judiciary.

Office of Legislative Services Estimate

Fiscal Impact	
Annual State Revenue Increase	$3,100,000 to $6,200,000
Annual State Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill will increase annual State revenue by $3.1 million to $6.2 million from the imposition of a $155 fee payable to the Judiciary by the plaintiff when filing a foreclosure complaint. Fee collections are to support the Foreclosure Mediation Program.

- The Foreclosure Mediation Program will receive additional indeterminate revenue from civil penalties of up to $1,000 that are to be imposed by the courts for the failure to attend a foreclosure mediation session. The Administrative Office of the Courts (AOC) estimated previously that penalty payments would likely be nominal.

- The bill may increase annual State expenditures by an indeterminate amount to the extent that the bill adds to the responsibilities of the Judiciary under the existing Foreclosure Mediation Program, results in caseload growth, or causes operational changes. The OLS, however, is not in a position to anticipate AOC operating decisions in response to the bill.

BILL DESCRIPTION

This bill codifies the Judiciary's existing Foreclosure Mediation Program into the New Jersey Statutes, makes various adjustments to the program, and provides a permanent funding source therefor; all effective on the first day of the seventh month following enactment.

Specifically, the bill requires that a homeowner receive written notice of the option to participate in the Foreclosure Mediation Program with a notice of intention to foreclose and again upon the filing of a mortgage foreclosure complaint.

An eligible homeowner-borrower may initiate mediation in accordance with court rules or a court may order mediation whenever a homeowner contests a foreclosure complaint. When initiating mediation, the homeowner would be required to submit a certification document, signed by a trained foreclosure prevention and default mitigation counselor.

The bill requires lenders to have a representative attend the mediation session, either in person or by telephone, who has authority to reach a mutually acceptable loan modification or other resolution. If either party fails to attend a mediation session, the court may, in addition to any other sanction the court deems appropriate, fine the absentee up to $1,000, or allow the other party to recover reasonable attorney's fees and litigation expenses, or both.

The bill imposes an additional $155 fee on every foreclosure complaint filing to support the Foreclosure Mediation Program. Of that amount, $95 will be used to reimburse trained foreclosure prevention and default mitigation counselors for their services. The remaining $60, as well as any penalty collected for the failure to attend a mediation session, is to be deposited into the "Foreclosure Mediation Fund," a dedicated, non-lapsing fund to be established within the General Fund. Fund balances would be used to operate the mediation program and to enhance the integrity of the mortgage foreclosure review process.

Lastly, the Judiciary is to compile and publish on its webpage annual program statistics.

FISCAL ANALYSIS

JUDICIAL BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill will increase annual State revenue by $3.1 million to $6.2 million, and may raise annual State expenditures by an indeterminate amount.

The bill creates two new State revenue streams to support the Foreclosure Mediation Program: a $155 fee that a plaintiff must pay when filing a foreclosure complaint and civil penalties of up to $1,000 for the failure to attend a foreclosure mediation session.

The OLS estimates that the $155 fee will generate between $3.1 million and $6.2 million per year. Between $1.9 million and $3.8 million of the projected total will compensate trained foreclosure prevention and default mitigation counselors for their services. The remaining $1.2 million to $2.4 million will be deposited into the Foreclosure Mediation Fund.

The lower end of the estimated range assumes 20,000 foreclosure complaints per year, which is consistent with an informal estimate provided by the AOC based on recent trends. The upper end assumes 40,000 complaints per year. The relatively wide range takes into account the significant fluctuation in the annual number of foreclosure complaints in the last 15 years. In FY 2006, for example, there were 21,752 foreclosure complaints. The number peaked at 65,222 in FY 2010 following the Great Recession and has been receding since. In reply to an FY 2018 OLS Discussion Point, the AOC reported 45,806 foreclosure complaints in FY 2016. The AOC now projects the filing of 20,000 foreclosure complaints per year based on most recent trends.

The OLS has no informational basis for estimating the revenue that the new civil penalty may generate. In its December 2017 estimate for the substantively similar Senate Bill No. 1130 (1R) of 2016, however, the AOC noted that prior experience with Foreclosure Mediation Program participants suggested that revenue generated via civil penalties would be nominal.

Concerning the bill's potential annual State expenditure increase, the bill largely codifies the existing Foreclosure Mediation Program and does not establish a new program. However, the bill assigns additional responsibilities to the Judiciary, such as the requirement to compile and publish on its webpage annual program statistics. Moreover, the funding the bill provides for the program may lead to caseload growth or operational changes. The extent to which the bill may ultimately increase annual operating expenditures will largely depend on AOC operating decisions, which the OLS cannot anticipate absent information from the AOC.

The Foreclosure Mediation Program began in January 2009 as a collaboration of the Judiciary, the New Jersey Housing and Mortgage Finance Agency (NJHMFA), the Office of Dispute Settlement in the Office of the Public Defender, Legal Services of New Jersey, and the Office of the Attorney General. The NJHMFA provided free trained housing counselors to eligible homeowners, while the Office of Dispute Settlement provided the mediation services and generally administered the program.

The program was originally funded through P.L.2008, c.104, which appropriated $10.0 million from the Long Term Obligation and Capital Expenditure Fund for foreclosure mediation and $2.5 million for NJHMFA-provided mortgage counseling. According to the Judiciary's August 2018 "Report of the Special Committee on Residential Foreclosures," these funds were supplemented by the proceeds of certain federal and State settlements with lenders that had engaged in improper practices. These were non-permanent funding sources.

According to the August 2018 report, by 2015 housing counselor services could no longer be sustained, and by 2017 the Office of Dispute Settlement ceased the mediation program. The Judiciary then absorbed and restructured the program in the Superior Court Clerk's Office. The mediations are currently conducted by trained Judiciary staff, rather than by paid mediators. The OLS has no information on the program's current operating expenditures.

Furthermore, on August 14, 2018, the NJHMFA announced the restart of its housing counselor program. The agency intended to allocate $1 million to the program to provide assistance to homeowners who wish to participate in the Foreclosure Mediation Program. Under the initiative, at least two participating counseling agencies are to serve each county.

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