

**ASSEMBLY, No. 5130**

---

**STATE OF NEW JERSEY**

**219th LEGISLATURE**

---

INTRODUCED DECEMBER 10, 2020

**Sponsored by:**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Establishes “New Jersey Foreclosure Prevention Act.”

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/7/2021)**

1 AN ACT concerning the mitigation of loss on distressed and  
2 foreclosed properties, supplementing and amending Title 55 of  
3 the Revised Statutes, and amending Title 2A of the New Jersey  
4 Statutes.

5  
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
7 *of New Jersey:*

8  
9 1. (New section) This act shall be known and may be cited as  
10 the "New Jersey Foreclosure Prevention Act."

11  
12 2. (New section) The Legislature finds and declares that:

13 a. New Jersey experienced heightened foreclosure rates during  
14 the Great Recession beginning in 2008 and continuing for the  
15 ensuing decade, only returning to pre-recession rates of foreclosure  
16 in 2019.

17 b. New Jersey is currently suffering through the COVID-19  
18 pandemic, with more than 1.6 million New Jersey residents seeking  
19 unemployment benefits due to job loss, furlough, or hour  
20 reductions.

21 c. Homeowners in New Jersey have suffered enormous negative  
22 economic impacts due to the COVID-19 pandemic, resulting in  
23 increased housing insecurity. During each month from April 2020  
24 through August 2020, the number of New Jersey households that  
25 deferred or did not pay their mortgages exceeded 160,000;

26 d. Given New Jersey's susceptibility to prolonged periods of  
27 elevated rates of foreclosure, as evidenced by the long-term impact  
28 of the Great Recession, the Legislature hereby determines and  
29 declares that there is a need to provide alternative foreclosure  
30 mitigation measures.

31  
32 3. (New section) As used in P.L. , c. (C. ) (pending  
33 before the Legislature as this bill):

34 "Agency" means the New Jersey Housing and Mortgage Finance  
35 Agency established pursuant to section 4 of P.L.1983, c.530  
36 (C.55:14K-4).

37 "Community development corporation" means a nonprofit  
38 community development corporation established pursuant to Title  
39 15 or 15A of the Revised Statutes of New Jersey, or other law of  
40 this State, with a focus on producing and operating affordable  
41 housing or housing with on-site social services for individuals with  
42 special needs.

43 "Community development financial institution" means an entity  
44 designated and certified by the United States Department of the  
45 Treasury as a Community Development Financial Institution

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 pursuant to 12 CFR Part 1805.

2 “Contractor” means a qualified community development  
3 financial institution that enters into a contract or loan with the  
4 agency pursuant to section 5 of P.L.1983, c.530 (C.55:14K-5).

5 “Eligible property” means any residential property or mortgage  
6 note that is owned by an institutional lender as the result of a  
7 mortgage foreclosure judgment or a deed in lieu of foreclosure, is  
8 by a municipality as the result of a tax foreclosure judgment or is  
9 subject to a nonperforming loan from an institutional lender.

10 “Fund” means the Foreclosure Intervention Fund, established  
11 pursuant to section 4 of P.L. , c. (C. ) (pending before the  
12 Legislature as this bill).

13 “Institutional lender” or “lender” means any lawfully constituted  
14 mortgage lender, mortgage investor, or mortgage loan servicer that  
15 owns an eligible property, including, but not limited to, any agency  
16 or instrumentality of the United States or the State, including, but  
17 not limited to, the Government National Mortgage Association, the  
18 Federal Home Loan Mortgage Corporation, the Federal National  
19 Mortgage Association, the Federal Housing Administration, the  
20 Small Business Administration, the Resolution Funding  
21 Corporation, and the Federal Deposit Insurance Corporation.

22 “Intercreditor agreement” means an agreement among creditors  
23 that sets forth the various lien positions and the rights and liabilities  
24 of each creditor and its impacts on the other creditors.

25 “Program” means the “New Jersey Residential Foreclosure  
26 Prevention Program” established pursuant to section 4 of P.L. , c.  
27 (C. ) (pending before the Legislature as this bill).

28 “Qualified community development financial institution” means  
29 a community development financial institution that has a minimum  
30 of \$50,000,000 in assets and a minimum of two years' experience in  
31 the financing and acquisition of real estate for affordable housing.

32

33 4. (New section) a. There is established in the agency the “New  
34 Jersey Residential Foreclosure Prevention Program,” which shall be  
35 subject to the powers of the agency, as designated pursuant to  
36 section 5 of P.L.1983, c.530 (C.55:14K-5). The goal of the  
37 program is to ensure that loss mitigation and foreclosure prevention  
38 measures are taken on eligible properties. Either directly, or  
39 through its contractors, the agency may purchase eligible properties  
40 and mortgage assets in furtherance of this goal, pursuant to section  
41 5 of P.L. , c. (C. ) (pending before the Legislature as this  
42 bill).

43 b. The agency in furtherance of the program may enter into  
44 contracts with any person, corporation, or entity which the agency  
45 determines to be necessary or appropriate to carry out its  
46 responsibilities under P.L. , c. (C. ) (pending before the  
47 Legislature as this bill). Such contracts shall be subject to the  
48 procedures adopted pursuant to section 5 of P.L. , c. (C. )

1 (pending before the Legislature as this bill). All contracts entered  
2 into in furtherance of the program shall be governed by the laws of  
3 the State and shall provide for indemnification of the agency.

4 c. In carrying out the agency's duties under P.L. , c. (C. )  
5 (pending before the Legislature as this bill), the agency may employ  
6 the consulting services of real estate and loan portfolio asset  
7 management firms, property management firms, auction marketing  
8 firms, brokerage services firms, appraisers, and such other  
9 consultants and employees required in the judgment of the agency,  
10 notwithstanding the provisions of Title 11A of the New Jersey  
11 Statutes.

12 d. Within 180 days following the enactment of P.L. , c.  
13 (C. ) (pending before the Legislature as this bill), the agency  
14 shall adopt a funding plan for the program utilizing the  
15 "Foreclosure Intervention Fund" established pursuant to section 6  
16 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
17 The agency may directly fund the program through revenue  
18 generated by the fund. The agency shall have the authority to alter  
19 its funding plan as the Executive Director of the agency deems  
20 necessary. The funding plan shall include, but not be limited to,  
21 program revenue, expected expenditures and projections for the  
22 acquisition of foreclosed residential properties or mortgage assets.

23  
24 5. (New section) a. (1) The agency may enter into contracts  
25 or loans, or both, with no more than two qualified community  
26 development financial institutions to negotiate, bid for, and  
27 purchase eligible properties and mortgage assets for the purpose  
28 facilitating the program. In selecting contractors from among  
29 qualified community development financial institutions, the agency  
30 shall accord a strong preference to qualified community  
31 development financial institutions that have substantial experience  
32 in lending in the State and substantial knowledge of the State's real  
33 estate markets. The agency may enter into contracts or loans, or  
34 both, with a partnership or consortia of organizations, as long as a  
35 qualified community development financial institution is the lead  
36 entity, or a partnership or consortia of multiple qualified community  
37 development financial institutions.

38 (2) Should the agency contract with a community development  
39 financial institution for the purposes of P.L. , c. (C. )  
40 (pending before the Legislature as this bill), the contract shall  
41 specify the amounts, schedules, and types of funding to be provided  
42 by the agency to the qualified community development financial  
43 institution, the repayment schedule for the portion of that funding to  
44 be repaid, and targeted goals for homeowner interventions. The  
45 agency may condition funding and goals upon the availability of  
46 funds to the program. The contract shall specify reasonable  
47 administrative costs sufficient to enable the qualified community  
48 development financial institution to exercise its obligations

1 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
2 this bill). The contract shall set forth criteria for instances when the  
3 purchase, sale, lease, and conveyance of properties furthers the  
4 purposes of P.L. , c. (C. ) (pending before the Legislature as  
5 this bill).

6 b. All purchases, sales, leases, and conveyances of property by  
7 qualified community development financial institutions exercised  
8 pursuant to this section shall be deemed to lessen the burdens of  
9 government in furthering the purposes of P.L. , c. (C. )  
10 (pending before the Legislature as this bill).

11  
12 6. (New section) a. There is established within the agency a  
13 Foreclosure Intervention Fund, which shall be a non-lapsing,  
14 revolving fund and which shall be the repository for funds  
15 appropriated or otherwise made available for the purposes of  
16 P.L. , c. (C. ) (pending before the Legislature as this bill),  
17 and any interest earned thereon. The fund shall be administered by  
18 the agency, in accordance with its authority under section 5 of  
19 P.L.1983, c.530 (C.55:14K-5) to manage funds for housing  
20 programs.

21 b. The agency may transfer into the fund any amounts held or  
22 received by the agency that are needed by the agency or its  
23 contractors for the purchase of eligible property.

24 c. The agency may use annually up to five percent of the monies  
25 available in the fund for the payment of any necessary  
26 administrative costs related to the administration of the program.

27 d. Revenue generated through the mechanisms established  
28 pursuant to N.J.S.2A:17-38 exceeding the funding plan developed  
29 pursuant to subsection d. of section 4 of P.L. , c. (C. )  
30 (pending before the Legislature as this bill) may be appropriated by  
31 the agency for additional foreclosure prevention programs.

32  
33 7. (New Section) a. The agency may make grants to eligible  
34 applicants, including, but not limited to, non-profit housing  
35 sponsors, municipalities or other governmental entities utilizing  
36 funds provided by P.L. , c. (C. ) (pending before the  
37 Legislature as this bill) or otherwise made available to the agency.  
38 Grants issued pursuant to this section shall be used to advance the  
39 goals of the program, as established pursuant to section 4 of P.L. ,  
40 c. (C. ) (pending before the Legislature as this bill).

41 b. The agency shall establish regulations, procedures or  
42 guidelines governing the qualifications of applicants, the  
43 application procedures and the criteria for awarding grants to such  
44 eligible applicants and the standards for establishing the amount,  
45 terms and conditions of each grant.

46  
47 8. (New section) a. The agency is authorized to defend and  
48 indemnify the federal government, any department, board, body,

1 agency or other entity thereof, the Government National Mortgage  
2 Association and its successors and assigns, the Federal National  
3 Mortgage Association and its successors and assigns, and the  
4 Federal Home Loan Mortgage Corporation and its successors and  
5 assigns, against claims, causes of action, demands, costs or  
6 judgments against that entity arising as a direct result of that  
7 entity's agreement with the agency, upon the terms and limitations  
8 the agency deems reasonable and appropriate. An agreement to  
9 defend and indemnify pursuant to this subsection shall not bar,  
10 reduce, limit or affect any remedies the agency may have to enforce  
11 the agency's agreement or to assert a claim for damages to which  
12 the agency may be entitled arising out of the entity's failure to  
13 perform the agreement, or for the recovery of funds expended for  
14 the defense of an entity if the defense was undertaken in response to  
15 a claim or cause of action brought against the entity which arose  
16 from gross negligence, willful misconduct, fraud, intentional tort,  
17 bad faith, or criminal conduct of the entity or one or more of its  
18 officials or employees. No one other than an entity which is a party  
19 to the agreement with the agency may enforce any agreement for  
20 defense or indemnification between that entity and the agency.

21 b. The agency may create a reserve fund, procure insurance or  
22 take other such appropriate action in order to meet its future  
23 obligations, if any, created by such indemnification obligations.  
24 Any agreement to indemnify pursuant to subsection a. may be made  
25 only as necessary or appropriate to the exercise of any power herein  
26 granted or reasonably implied, provided that: (1) such  
27 indemnification shall be payable solely from the funds of the  
28 agency on deposit in its General Fund or placed in a reserve fund  
29 for that purpose; and (2) such indemnification shall not constitute a  
30 debt, obligation or liability of the State, and the State shall not be  
31 liable for any obligation as a result of the agency's indemnification  
32 obligation.

33

34 9. N.J.S.2A:17-38 is amended to read as follows:

35 2A:17-38. a. When a sheriff or other officer makes a sale by  
36 virtue of an execution or executions to **him** the sheriff or officer  
37 directed, **he** the sheriff or officer shall, within 30 days thereafter,  
38 make and file, with his bill of costs or execution fees, in the office  
39 of the clerk of the court out of which the execution or executions  
40 issued, a true statement and calculation, in order of time, of the  
41 execution or executions by virtue of which the sale was made, the  
42 amount or amounts due thereon, respectively, at the time of the  
43 sale, the time or times of sale and the amount of the sales.

44 b. (1) When calculating the amount due thereon, as described in  
45 subsection a. of this section, the sheriff or officer shall additionally  
46 consider \$350 per sale to be utilized by the fund within the New  
47 Jersey Housing and Mortgage Finance Agency established in

1 section 6 of P.L. , c. (C. ) (pending before the Legislature as  
2 this bill).

3 (2) The revenues obtained from these increased amounts, after  
4 deduction of any actual administrative costs incurred by the sheriff  
5 or officer in carrying out the provisions of this subsection, shall be  
6 transmitted no later than the first day of each quarter by the sheriff  
7 or officer to the fund with an accounting of collections and  
8 foreclosure actions during the corresponding quarter.

9 c. The statement shall be certified under the hand of the officer  
10 making and filing it, and shall be conclusive against the officer  
11 only. If there be more sales than **[1]** one, the statement shall be  
12 made and filed within 30 days after the final sale.  
13 (cf: N.J.S.2A:17-38)

14  
15 10. Section 7 of P.L.1983, c.530 (C.55:14K-7) is amended to  
16 read as follows:

17 7. a. Loans made by the agency to finance housing projects  
18 shall be subject to the following terms and conditions:

19 (1) The loan shall be for a period of time not in excess of 50  
20 years as determined by the agency;

21 (2) The amount of the loan shall not exceed 90% of the total  
22 project cost as determined by the agency, except that as to projects  
23 to be owned, constructed, improved, rehabilitated, operated,  
24 managed and maintained as mutual housing or by any corporation  
25 or association organized not for profit which has as one of its  
26 purposes the construction, improvement or rehabilitation of housing  
27 projects, the amount of the loan shall not exceed 100% of the total  
28 project cost as determined by the agency; but the agency may  
29 make additional loans to a housing sponsor to which a loan by the  
30 agency for the cost of a project is outstanding if and to the extent  
31 that the agency finds that such additional loan is required to more  
32 adequately secure and protect the project or to avoid a default by  
33 the sponsor on the original loan for the cost of the project and is in  
34 the best interest of the agency and the holders of its bonds issued to  
35 finance the original loan for the cost of the project;

36 (3) The interest rate on the loan shall be established by the  
37 agency at the lowest level consistent with the agency's cost of  
38 operation and its responsibilities to the holders of its bonds;

39 (4) The loan shall be evidenced by a mortgage note or bond and  
40 by a mortgage which shall be a first lien on the project and which  
41 shall contain such terms and provisions and be in a form approved  
42 by the agency. The agency shall require the qualified housing  
43 sponsor receiving a loan or its contractor to post security in  
44 amounts related to the project cost as established by regulation and  
45 to execute such other assurances and guarantees as the agency may  
46 deem necessary and may require its principals or stockholders to  
47 also execute such other assurances and guarantees as the agency  
48 may deem necessary;

1       (5) The loan shall be subject to an agreement between the  
2 agency and the housing sponsor which will subject the housing  
3 sponsor and its principals or stockholders to limitations established  
4 by the agency as to rentals and other charges, builders' and  
5 developers' profits and fees, and the disposition of its property and  
6 franchises to the extent more restrictive limitations are not  
7 provided by the law under which the borrower is incorporated or  
8 organized;

9       (6) The loan shall be subject to an agreement between the  
10 agency and the housing sponsor limiting the housing sponsor and its  
11 principals or stockholders to such rate of return on its investment in  
12 the housing project to be assisted with a loan from the agency as  
13 shall be fixed from time to time by the agency in its regulations  
14 which shall take into account the prevailing rates of return available  
15 for similar investments and the risks associated with the  
16 development of the project, together with factors designed to  
17 promote the objectives of providing affordable housing,  
18 encouraging investment in urban development areas, maintaining  
19 and improving the existing housing stock, and other objectives of  
20 this act; but agreements entered into by the predecessors of the  
21 agency prior to the effective date of this act shall continue to be  
22 subject to any restrictions on rate of return imposed by prior law  
23 unless those restrictions are expressly modified pursuant to  
24 regulations of the agency. No housing sponsor which is permitted  
25 by the provisions of the law under which it is organized or  
26 incorporated to earn a return on its investment, nor any of the  
27 principals or stockholders of that housing sponsor, shall earn,  
28 accept or receive a return on investment greater than the rate of  
29 return fixed by the agency in any housing project assisted with a  
30 loan from the agency, whether upon the completion of the  
31 construction, improvement or rehabilitation of the project, or upon  
32 the operation thereof, or upon the sale, assignment or lease of the  
33 project to any other person, association or corporation. Any person,  
34 association or corporation who violates the provisions of this  
35 subsection is guilty of a crime of the fourth degree;

36       (7) No loan shall be executed except a loan made to a  
37 corporation or association organized not for profit which has as one  
38 of its purposes the development, construction, improvement or  
39 rehabilitation of housing projects or for mutual housing unless the  
40 housing sponsor agrees (a) to certify upon completion of project  
41 construction, improvement or rehabilitation, subject to audit by the  
42 agency, either that the actual project cost as defined herein  
43 exceeded the amount of the loan proceeds by 10% or more, or the  
44 amount by which the loan proceeds exceed 90% of the total project  
45 cost, and (b) to pay forthwith to the agency, for application to  
46 reduction of the principal of the loan, the amount, if any, of such  
47 excess loan proceeds, subject to audit and determination by the  
48 agency. No loan shall be made to a corporation or association



1 organized not for profit or for mutual housing unless the  
2 corporation or association organized not for profit or for mutual  
3 housing agrees to certify the actual project cost upon completion of  
4 the project, subject to audit and determination by the agency, and  
5 further agrees to pay forthwith to the agency, for application to  
6 reduction of the principal of the loan, the amount, if any, by which  
7 the proceeds of the loan exceed the certified project cost subject to  
8 audit and determination by the agency. Notwithstanding the  
9 provisions of this paragraph, the agency may accept, in lieu of any  
10 certification of project cost as provided herein, such other  
11 assurances of the project cost in any form or manner whatsoever, as  
12 will enable the agency to determine with reasonable accuracy the  
13 amount of the project cost;

14 (8) No loan shall be made for the construction, improvement or  
15 rehabilitation of a housing project for which tax exemption is  
16 granted by a municipality unless the tax exemption remains in  
17 effect during the entire term of the loan, unless a lesser period of  
18 tax exemption is approved by the agency; and

19 (9) The loan shall be subject to an agreement between the  
20 agency and the qualified housing sponsor which contains a  
21 provision stating the prevailing wage rate, as determined by either  
22 the Commissioner of Labor and Industry or the Secretary of the  
23 United States Department of Labor in accordance with the  
24 provisions of section 42 of this act, which can be paid to the  
25 workmen employed in the performance of any contract for the  
26 construction or rehabilitation of any housing project, and which  
27 stipulates that the qualified housing sponsor, or any builder,  
28 contractor or subcontractor thereof, shall pay to such workmen not  
29 less than the applicable prevailing wage rate pursuant to that  
30 section.

31 b. As a condition of any loan to finance a housing project, the  
32 agency shall have the power at all times during the construction,  
33 improvement or rehabilitation of a housing project and the  
34 operation thereof:

35 (1) To enter upon and inspect without prior notice any project,  
36 including all parts thereof, for the purpose of investigating the  
37 physical and financial condition thereof, and its construction,  
38 improvement, rehabilitation, operation, management and  
39 maintenance, and to examine all books and records with respect to  
40 capitalization, income and other matters relating thereto and to  
41 make such charges as may be required to cover the cost of such  
42 inspections and examinations;

43 (2) To order such alterations, changes or repairs as may be  
44 necessary to protect the security of its investment in a housing  
45 project or the health, safety, and welfare of the occupants thereof;

46 (3) To order any managing agent, project manager or owner of a  
47 housing project to do such acts as may be necessary to comply with  
48 the provisions of all applicable laws or ordinances or any rule or

1 regulation of the agency or the terms of any agreement concerning  
2 the project or to refrain from doing any acts in violation thereof and  
3 in this regard the agency shall be a proper party to file a complaint  
4 and to prosecute thereon for any violations of law or ordinances as  
5 set forth herein;

6 (4) To require the adoption and continuous use of uniform  
7 systems of accounts and records for a project and to require all  
8 owners or managers of a project to file annual reports containing  
9 that information and verified in such manner as the agency shall  
10 require, and to file at the times and on the forms as it may  
11 prescribe, reports and answers to specific inquiries required by the  
12 agency to determine the extent of compliance with any agreement,  
13 the terms of the loan, the provisions of this act and any other  
14 applicable law;

15 (5) To enforce, by court action if necessary, the terms and  
16 provisions of any agreement between the agency and the housing  
17 sponsor and the terms of any agreement between the housing  
18 sponsor and any municipality granting tax exemption, as to  
19 schedules of rental or carrying charges, income limits as applied to  
20 tenants or occupants, or any other limitation imposed upon the  
21 housing sponsor as to financial structure, construction or operation  
22 of the project;

23 (6) (a) Subject to the provisions of paragraph (7) of subsection  
24 b. of this section, in the event of a violation by the housing sponsor  
25 of the terms of any agreement between the agency and the housing  
26 sponsor, or between the municipality granting tax exemption and  
27 the housing sponsor, or in the event of a violation by the housing  
28 sponsor of this act or of the terms of the loan agreement or of any  
29 rules and regulations of the agency duly promulgated pursuant to  
30 this act, or in the event that the agency shall determine that any loan  
31 or advance from the Housing Development Fund pursuant to section  
32 30 of this act is in jeopardy of not being repaid, the agency may,  
33 without resort to any judicial process, assume all of the powers and  
34 duties of the housing sponsor in the management and operation of  
35 the project, including but not limited to the power to receive all  
36 revenues and pay all expenses of the project and the power to  
37 control all property, including bank accounts and cash, owned by  
38 the housing sponsor. The agency may appoint such person or  
39 persons whom the agency in its sole discretion deems advisable,  
40 including officers or employees of the agency, to perform the  
41 functions of the officers or other controlling persons of the housing  
42 sponsor. Persons so appointed need not be stockholders or meet  
43 other qualifications which may be prescribed by the certificate of  
44 incorporation, bylaws or partnership agreement of the housing  
45 sponsor. In the absence of fraud or bad faith, persons so appointed  
46 shall not be personally liable for debts, obligations or liabilities of  
47 the housing sponsor. Persons so appointed shall serve only for a  
48 period coexistent with the duration of the violation or until the

1 agency is assured in a manner satisfactory to it that the violation, or  
2 violations of a similar nature, will not recur. Persons so appointed  
3 shall serve in such capacity without compensation, but shall be  
4 entitled to be reimbursed, if and as the certificate of incorporation,  
5 bylaws or partnership agreement of the housing sponsor may  
6 provide, for all necessary expenses incurred in the discharge of their  
7 duties as determined by the agency; and

8 (b) the provisions of section 18 of P.L. 1991, c. 431 (C.40A:20-  
9 18) concerning housing projects in financial difficulty shall not  
10 apply to housing projects financed by the agency; and

11 (7) The provisions of this subsection and this act pertaining to  
12 the regulation of housing sponsors shall be for purposes of  
13 protecting the collateral for any loan or loans; implementing or  
14 enforcing any condition, requirement or criterion for loans as  
15 provided in this act or other applicable law; and securing the rights  
16 and remedies of lenders and bond holders to the extent of the  
17 undertakings of the agency. Subject to the foregoing, the agency  
18 shall permit, provide for and encourage the right of local housing  
19 sponsors to exercise their own initiative and competence in the  
20 administration of their assets and the conduct and operation of  
21 housing projects and exercise their rights and responsibilities to the  
22 fullest extent permitted by law. Therefore, the agency shall  
23 exercise its remedies and powers under paragraph (6) of this  
24 subsection only with regard to material violations and only after  
25 reasonable notice and reasonable opportunity to correct the  
26 violation is provided to the housing sponsor in accordance with  
27 regulations adopted by the agency.

28 c. Notwithstanding any law, rule or regulation to the contrary,  
29 the provisions of paragraphs (5) and (6) of subsection a. of this  
30 section shall not be applicable to market rate units.

31 d. As used in this section, "market rate unit" means a housing  
32 unit for which occupancy is not subject to limitations based on  
33 tenant income.

34 (cf: P.L.1983, c. 530, s. 7)

35  
36 11. This act shall take effect immediately.

#### 37 38 39 STATEMENT

40  
41 This bill, to be known as the cited as the "New Jersey  
42 Foreclosure Prevention Act," would establish the "New Jersey  
43 Residential Foreclosure Prevention Program," within the New  
44 Jersey Housing and Mortgage Finance Agency ("HMFA"). The  
45 goal of the program would be to ensure that loss mitigation and  
46 foreclosure prevention measures are taken on eligible properties.  
47 Either directly, or through its contractors, the bill authorizes the  
48 agency to purchase "eligible properties" and mortgage assets in

1 furtherance of this goal. The bill defines an “eligible property” as a  
2 residential property or mortgage note owned by an institutional  
3 lender as the result of a mortgage foreclosure judgment or a deed in  
4 lieu of foreclosure, owned by a municipality as the result of a tax  
5 foreclosure judgment, or that is subject to a nonperforming loan  
6 from an institutional lender.

7 The bill authorizes HMFA to enter into contracts with any  
8 person, corporation, or entity which the agency determines to be  
9 necessary or appropriate to carry out its responsibilities under the  
10 bill. In carrying out its duties, HMFA would be authorized to  
11 employ the consulting services of real estate and loan portfolio asset  
12 management firms, property management firms, auction marketing  
13 firms, brokerage services firms, appraisers, and such other  
14 consultants and employees required in HMFA’s judgment.

15 Within 180 days following the enactment of the bill, HMFA  
16 would be required to adopt a funding plan for the program utilizing  
17 the “Foreclosure Intervention Fund” established under the bill. The  
18 agency would be authorized to directly fund the program through  
19 revenue generated by the fund. The agency would have the  
20 authority to alter its funding plan as the Executive Director of the  
21 agency deems necessary. The funding plan would include, but not  
22 be limited to, program revenue, expected expenditures and  
23 projections for the acquisition of foreclosed residential properties or  
24 mortgage assets.

25 The bill would authorize HMFA to enter into contracts or loans,  
26 or both, with no more than two qualified community development  
27 financial institutions to negotiate, bid for, and purchase eligible  
28 properties and mortgage assets for the purpose facilitating the  
29 program. In selecting contractors from among qualified community  
30 development financial institutions, the bill would authorize HMFA  
31 to accord a strong preference to qualified community development  
32 financial institutions that have substantial experience in lending in  
33 the State and substantial knowledge of the State’s real estate  
34 markets. HMFA may enter into contracts or loans, or both, with a  
35 partnership or consortia of organizations, as long as a qualified  
36 community development financial institution is the lead entity, or a  
37 partnership or consortia of multiple qualified community  
38 development financial institutions.

39 Should HMFA contract with a community development financial  
40 institution for the purposes of the bill, the contract would be  
41 required to specify the amounts, schedules, and types of funding to  
42 be provided to the qualified community development financial  
43 institution, the repayment schedule for the portion of that funding to  
44 be repaid, and targeted goals for homeowner interventions. HMFA  
45 would be permitted to condition funding and goals upon the  
46 availability of funds to the program. The contract would specify  
47 reasonable administrative costs sufficient to enable the qualified  
48 community development financial institution to exercise its

1 obligations under the bill. The contract would set forth criteria for  
2 instances when the purchase, sale, lease, and conveyance of  
3 properties furthers the purposes of the bill.

4 All purchases, sales, leases, and conveyances of property by  
5 qualified community development financial institutions exercised  
6 pursuant to this section would be deemed to lessen the burdens of  
7 government in furthering the purposes of the bill.

8 The bill would establish a Foreclosure Intervention Fund  
9 (“fund”) within HMFA, which would be a non-lapsing, revolving  
10 fund and which would be the repository for funds appropriated or  
11 otherwise made available for the purposes of the bill. HMFA would  
12 be permitted to transfer into the fund any amounts held or received  
13 that are needed for the purchase of eligible property. HMFA would  
14 be permitted to use annually up to five percent of the monies  
15 available in the fund for the payment of any necessary  
16 administrative costs related to the program.

17 The bill would authorize a new \$350 fee to be collected at  
18 sheriff’s sale. Revenue generated through the fee exceeding the  
19 funding plan developed under the bill could be appropriated by  
20 HMFA for additional foreclosure prevention programs.

21 The bill would authorize the agency to make grants to eligible  
22 applicants, including, but not limited to, non-profit housing  
23 sponsors, municipalities or other governmental entities utilizing  
24 funds provided by the bill, or otherwise made available to HMFA.  
25 HMFA would establish regulations, procedures or guidelines  
26 governing the qualifications of applicants, the application  
27 procedures and the criteria for awarding grants to such eligible  
28 applicants and the standards for establishing the amount, terms and  
29 conditions of each grant.

30 Under the bill, HMFA would be authorized to defend and  
31 indemnify the federal government, any department, board, body,  
32 agency or other entity thereof, and its successors and assigns,  
33 against claims, causes of action, demands, costs or judgments  
34 against that entity arising as a direct result of that entity’s  
35 agreement with the agency, upon the terms and limitations the  
36 agency deems reasonable and appropriate. The bill would authorize  
37 HMFA to create a reserve fund, procure insurance or take other  
38 such appropriate action in order to meet its future obligations, if  
39 any, created by such indemnification obligations. Any agreement to  
40 indemnify pursuant to the bill could be made only as necessary or  
41 appropriate to the exercise of any power herein granted or  
42 reasonably implied, provided that (1) such indemnification shall be  
43 payable solely from the funds of the agency on deposit in its general  
44 fund or placed in a reserve fund for that purpose; and (2) such  
45 indemnification shall not constitute a debt, obligation or liability of  
46 the State, and the State shall not be liable for any obligation as a  
47 result of the agency’s indemnification obligation.

1       Finally, the bill would limit the application of an existing law  
2       that restricts the investment returns of housing sponsors that receive  
3       loans from HMFA, such that the restriction would not apply to  
4       loans issued with regard to market rate housing units.