

ASSEMBLY, No. 479

STATE OF NEW JERSEY

216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Hunterdon and Mercer)

SYNOPSIS

Extends moratorium on the imposition of Statewide non-residential development fees until 2018; establishes the “New Jersey Residential Foreclosure Transformation Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the Statewide non-residential development fee,
2 and the transfer and foreclosure of residential properties for
3 affordable housing purposes, amending P.L.2008, c.46 and
4 supplementing Title 55 of the Revised Statutes.

5

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

8

9 1. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
10 read as follows:

11 37. a. The provisions of this subsection shall not apply to a
12 financial or other contribution that a developer made or committed
13 itself to make prior to the effective date of sections 32 through 38 of
14 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7). The
15 provisions of P.L.2008, c.46 that would permit the imposition of a
16 fee upon a developer of non-residential property shall not apply to:

17 (1) Non-residential property for which a site plan has received
18 either preliminary approval, pursuant to section 34 of P.L.1975,
19 c.291 (C.40:55D-46), or final approval, pursuant to section 38 of
20 P.L.1975, c.291 (C.40:55D-50), prior to **July** January 1, **2013**
21 2016; provided that a permit for the construction of the building has
22 been issued by the local enforcing agency having jurisdiction, in
23 accordance with section 13 of P.L.1975, c.217 (C.52:27D-131),
24 prior to **January** July 1, **2015** 2018;

25 (2) A non-residential planned development which has received
26 approval of a general development plan pursuant to section 5 of
27 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
28 for which the developer has entered into a developer's agreement
29 pursuant to a development approval granted pursuant to P.L.1975,
30 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
31 into a redevelopment agreement pursuant to P.L.1992, c.79
32 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
33 (C.52:27D-329.1 et al.); provided, however, that the general
34 development plan, developer's agreement, redevelopment
35 agreement, or any development agreement pursuant to the
36 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
37 provides that the developer or redeveloper pay a fee for affordable
38 housing of at least one percent of the equalized assessed value of
39 the improvements which are the subject of the development plan,
40 developer's agreement, or redevelopment agreement;

41 (3) A non-residential project that, prior to **July** January 1,
42 **2013** 2016, has been referred to a planning board by the State, a
43 governing body, or other public agency for review pursuant to
44 section 22 of P.L.1975, c.291 (C.40:55D-31); provided that a permit

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 for the construction of the building has been issued by the local
2 enforcing agency having jurisdiction, in accordance with section 13
3 of P.L.1975, c.217 (C.52:27D-131), prior to **【January】** July 1,
4 **【2015】** 2018;

5 (4) A non-residential property for which a site plan application
6 has received approval by the New Jersey Meadowlands
7 Commission, pursuant to section 13 of P.L.1968, c.404 (C.13:17-
8 14) prior to **【July】** January 1, **【2013】** 2016; provided that a permit
9 for the construction of the building has been issued by the local
10 enforcing agency having jurisdiction, in accordance with section 13
11 of P.L.1975, c.217 (C.52:27D-131), prior to **【January】** July 1,
12 **【2015】** 2018 ;

13 (5) Individual buildings within a nonresidential phased
14 development that received either preliminary or final approval prior
15 to **【July】** January 1, **【2013】** 2016 , provided that a permit for the
16 construction of the building has been issued prior to **【January】** July
17 1, **【2015】** 2018.

18 b. A developer may challenge non-residential development fees
19 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
20 filing a challenge with the Director of the Division of Taxation.
21 Pending a review and determination by the director, which shall be
22 made within 45 days of receipt of the challenge, collected fees shall
23 be placed in an interest bearing escrow account by the municipality
24 or by the State, as the case may be. Appeals from a determination
25 of the director may be made to the tax court in accordance with the
26 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
27 seq., within 90 days after the date of such determination. Interest
28 earned on amounts escrowed shall be credited to the prevailing
29 party.

30 c. Whenever non-residential development is situated on real
31 property that has been previously developed with a building,
32 structure, or other improvement, the non-residential development
33 fee shall be equal to two and a half (2.5) percent of the equalized
34 assessed value of the land and improvements on the property where
35 the non-residential development is situated at the time the final
36 certificate of occupancy is issued, less the equalized assessed value
37 of the land and improvements on the property where the non-
38 residential development is situated, as determined by the tax
39 assessor of the municipality at the time the developer or owner,
40 including any previous owners, first sought approval for a
41 construction permit, including, but not limited to, demolition
42 permits, pursuant to the State Uniform Construction Code, or
43 approval under the "Municipal Land Use Law," P.L.1975, c.291
44 (C.40:55D-1 et seq.). If the calculation required under this section
45 results in a negative number, the non-residential development fee
46 shall be zero.

1 Whenever the developer of a non-residential development has
2 made or committed itself to make a financial or other contribution
3 relating to the provision of housing affordable to low and moderate
4 income households prior to the enactment of P.L.2008, c.46
5 (C.52:27D-329.1 et al.), the non-residential development fee shall
6 be reduced by the amount of the financial contribution and the fair
7 market value of any other contribution made by or committed to be
8 made by the developer. For purposes of this section, a developer is
9 considered to have made or committed itself to make a financial or
10 other contribution, if and only if: (1) the contribution has been
11 transferred, including but not limited to when the funds have
12 already been received by the municipality; (2) the developer has
13 obligated itself to make a contribution as set forth in a written
14 agreement with the municipality, such as a developer's agreement;
15 or (3) the developer's obligation to make a contribution is set forth
16 as a condition in a land use approval issued by a municipal land use
17 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
18 (C.40:55D-1 et seq.).

19 d. Unless otherwise provided for by law, no municipality shall
20 be required to return a financial or any other contribution made by
21 or committed to be made by the developer of a non-residential
22 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
23 329.1 et al.) relating to the provision of housing affordable to low
24 and moderate income households, provided that the developer does
25 not obtain an amended, modified, or new municipal land use
26 approval with a substantial change in the non-residential
27 development. If the developer obtains an amended, modified, or
28 new land use approval for non-residential development, the
29 municipality, person, or entity shall be required to return to the
30 developer any funds or other contribution provided by the developer
31 for the provision of housing affordable to low and moderate income
32 households and the developer shall not be entitled to a reduction in
33 the affordable housing development fee based upon that
34 contribution.

35 e. The provisions of sections 32 through 38 of P.L.2008, c.46
36 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
37 manner as affecting the method or timing of assessing real property
38 for property taxation purposes. The payment of a non-residential
39 development fee shall not increase the equalized assessed value of
40 any property.

41 (cf: P.L.2011, c.122, s.1)

42

43 2. (New section) Sections 2 through 14 of P.L. , c. (C.)
44 (pending before the Legislature as this bill) shall be known and may
45 be cited as the "New Jersey Residential Foreclosure Transformation
46 Act."

1 3. (New section) The Legislature finds and declares that:

2 a. In recent years, there has been an enormous expansion in the
3 number of mortgage foreclosure filings in New Jersey and across
4 the nation. The number of mortgage foreclosure actions filed in the
5 New Jersey Courts grew from just over 20,000 in 2005 to more than
6 51,000 in 2008, 66,000 in 2009, and 58,000 in 2010.

7 b. Preliminary information indicates a decline in the number of
8 residential mortgage foreclosure filings during 2011. However, this
9 decline is largely attributable to actions undertaken by the New
10 Jersey Judiciary which, in December of 2010, suspended the
11 processing of uncontested residential foreclosures by the six biggest
12 lenders in order to address "robo-signing" and other processing
13 irregularities.

14 c. Despite this decline, it has been reported that more than one
15 in 10 New Jersey mortgage loans are already in foreclosure or are
16 90 days or more in arrears. Because of the large number of
17 foreclosures filed during the 2009-2010 period, and the Judiciary's
18 suspension of foreclosure processing, reports indicate that as of
19 August 2011 more than 100,000 residential foreclosure cases were
20 still open. Now that the courts have resumed processing
21 foreclosures for the big six lenders, it is widely believed that
22 foreclosure filings will increase. This is due in part to the large
23 number of mortgages that are seriously delinquent, more than 90
24 days past due. Reports have indicated that during the suspension
25 period mortgage lenders were waiting to file more than 28,000
26 additional foreclosures and that another 55,000 mortgage loans
27 were over 90 days delinquent.

28 d. Many of these foreclosed residential properties are vacant,
29 undermining the health, safety, and economic vitality of
30 neighborhoods, depressing their property values, and reducing
31 revenues to municipalities.

32 e. It is the public policy of this State to encourage the
33 production of low-income and moderate-income housing to serve
34 the general welfare of all the State's residents.

35 f. The availability of tens of thousands of foreclosed
36 residential properties presents a unique opportunity for the State to
37 facilitate the purchase and dedication, or the rental, of housing units
38 for low-income and moderate-income residents.

39 g. Establishment of a temporary program within the New
40 Jersey Housing and Mortgage Finance Agency dedicated to the
41 purpose of identifying foreclosed residential properties and
42 facilitating their purchase and dedication for occupancy or their
43 rental, including, but not limited to, low-income and moderate-
44 income families, is in the public interest of the State.

45

46 4. (New section) As used in sections 2 through 14 of P.L. , ,

47 c. (C.) (pending before the Legislature as this bill):

1 “Affordable” means a sales price or rent within the means of a
2 low - or moderate - income household.

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

6 "Community development financial institution" means an entity
7 designated and certified by the United States Department of the
8 Treasury as a Community Development Financial Institution
9 pursuant to 12 CFR Part 1805.

10 "Contractor" means a qualified community development
11 financial institution that enters into a contract or loan with the
12 agency pursuant to section 8 of P.L. , c. (C.) (pending
13 before the Legislature as this bill).

14 "Eligible property" means any residential property that is owned
15 by an institutional lender as the result of a mortgage foreclosure.

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

25 "Intercreditor agreement" means an agreement among creditors
26 that sets forth the various lien positions and the rights and liabilities
27 of each creditor and its impacts on the other creditors.

28 "Low-income" means 50 percent or less of the median gross
29 household income for households of the same size within the
30 housing region in which the household is located, based upon the
31 United States Department of Housing and Urban Development's
32 Section 8 Income Limits (uncapped) averaged across counties for
33 the housing region.

34 "Low-income housing" means housing affordable, according to
35 United States Department of Housing and Urban Development or
36 other recognized standards for home ownership and rental costs,
37 and occupied or reserved for occupancy by households with a gross
38 household income equal to 50 percent or less of the median gross
39 household income for households of the same size within the
40 housing region in which the housing is located.

41 "Market-rate units" means housing not restricted to low- and
42 moderate-income households that may sell or rent at any price.

43 "Moderate-income" means more than 50 percent but less than 80
44 percent of the median gross household income for households of the
45 same size within the housing region in which the household is
46 located, based upon the United States Department of Housing and

1 Urban Development's Section 8 Income Limits (uncapped) averaged
2 across counties for the housing region.

3 "Moderate-income housing" means housing affordable,
4 according to United States Department of Housing and Urban
5 Development or other recognized standards for home ownership
6 and rental costs, and occupied or reserved for occupancy by
7 households with a gross household income equal to more than 50
8 percent but less than 80 percent of the median gross household
9 income for households of the same size within the housing region in
10 which the housing is located.

11 "Program" means the "New Jersey Foreclosure Transformation
12 Program" established pursuant to sections 2 through 14 of P.L. ,
13 c. (C.) (pending before the Legislature as this bill).

14 "Qualified community development financial institution" means
15 a community development financial institution that has a minimum
16 of \$50 million in assets under management and a minimum of two
17 years' experience in the financing and acquisition of real estate for
18 affordable housing.

19 "Qualifying household" means a very-low- , low-, or moderate-
20 income household, the head of which certifies in writing that the
21 household intends to occupy the property as a principal residence
22 for at least 12 months.

23 "Very-low-income" means 30 percent or less of the median gross
24 household income for households of the same size within the
25 housing region in which the household is located, based upon the
26 United States Department of Housing and Urban Development's
27 Section 8 Income Limits (uncapped) averaged across counties for
28 the housing region.

29 "Very-low-income housing" means housing affordable,
30 according to United States Department of Housing and Urban
31 Development or other recognized standards for home ownership
32 and rental costs, and occupied or reserved for occupancy by
33 households with a gross household income equal to 30 percent or
34 less of the median gross household income for households of the
35 same size within the housing region in which the housing is located.
36

37 5. (New section) There is established in the New Jersey
38 Housing and Mortgage Finance Agency the "New Jersey
39 Foreclosure Transformation Program," which shall be a temporary
40 program for the purpose of purchasing foreclosed residential
41 properties from institutional lenders and dedicating them for
42 occupancy as affordable housing.
43

44 6. (New section) To implement the program, the agency shall
45 have the following powers:

46 a. To enter into contracts and modify, or consent to the
47 modification of, any contract or agreement to which the agency is a

1 party or in which the agency has an interest under sections 2
2 through 14 of P.L. , c. (C.) (pending before the Legislature
3 as this bill), with or without public bidding, notwithstanding the
4 provisions of any other law.

5 b. To make advance, progress, or other payments.

6 c. To acquire, hold, lease, mortgage, maintain, and dispose of,
7 at public or private sale, real and personal property, using any
8 legally available private sector methods including without
9 limitation, securitization of debt or equity, limited partnerships,
10 mortgage investment conduits, and real estate investment trusts, and
11 otherwise exercise all the usual incidents of ownership of property
12 necessary and convenient to the operations of the agency; provided,
13 however, that every contract for the acquisition of real property
14 entered into by the agency, and every deed conveying real property
15 to the agency, shall provide that if the agency holds title to the
16 property on the 61st day after the date of the deed, all rights, title,
17 and interest conveyed to the agency shall automatically revert to
18 and vest in the grantor without the necessity of any further act on
19 the part of or on behalf of the grantor, it being the intent to convey a
20 determinable estate. In each case where title has reverted to and re-
21 vested in the grantor as provided in this subsection, the agency shall
22 memorialize the reversion and re-vesting of title by the immediate
23 execution and delivery of a deed to the grantor conveying all of the
24 agency's estate, right, title, and interest in and to the property
25 described therein.

26 d. To sue and be sued in its own name in any court of
27 competent jurisdiction.

28
29 7. (New section) In addition to the powers of the agency
30 described in section 6 of P.L. , c. (C.) (pending before the
31 Legislature as this bill) in implementing the program, the agency
32 shall have the following powers:

33 a. The agency may enter into contracts with any person,
34 corporation, or entity which the agency determines to be necessary
35 or appropriate to carry out its responsibilities under sections 2
36 through 14 of P.L. , c. (C.) (pending before the Legislature
37 as this bill). Such contracts shall be subject to the procedures
38 adopted pursuant to section 8 of P.L. , c. (C.) (pending
39 before the Legislature as this bill).

40 b. In carrying out the agency's duties under sections 2 through
41 14 of P.L. , c. (C.) (pending before the Legislature as this
42 bill), the agency may utilize the services of private persons,
43 including real estate and loan portfolio asset management, property
44 management, auction marketing, and brokerage services, if such
45 services are available in the private sector and the agency
46 determines utilization of such services are practicable and efficient.

1 8. (New section) a. (1) To implement the program, the agency
2 shall enter into contracts or loans, or both, with no more than two
3 qualified community development financial institutions to
4 negotiate, bid for, and purchase eligible properties and mortgage
5 assets from institutional lenders for the purpose of producing
6 affordable housing. In selecting contractors from among qualified
7 community development financial institutions, the agency shall
8 accord a strong preference to qualified community development
9 financial institutions that have substantial experience in lending in
10 New Jersey and substantial knowledge of New Jersey real estate
11 markets. The agency may enter into contracts or loans, or both,
12 with a partnership or consortia of organizations, as long as a
13 qualified community development financial institution is the lead
14 entity, or a partnership or consortia of multiple qualified community
15 development financial institutions.

16 (2) The contracts entered into pursuant to paragraph (1) of this
17 subsection shall specify the amounts, schedules, and types of
18 funding to be provided by the agency to the qualified community
19 development financial institutions, the repayment schedule for the
20 portion of that funding to be repaid, and targeted goals of affordable
21 housing to be produced. The agency may condition funding and
22 goals upon the availability of funds to the agency. The contracts
23 shall specify reasonable administrative costs sufficient to enable the
24 qualified community development financial institutions to exercise
25 their obligations pursuant to sections 2 through 14 of P.L. ,
26 c. (C.) (pending before the Legislature as this bill). The
27 contracts shall set forth criteria for instances when the purchase,
28 sale, lease, and conveyance of properties as market-rate units
29 furthers the purposes of sections 2 through 14 of P.L. , c. (C.)
30 (pending before the Legislature as this bill).

31 b. (1) As soon as possible after the agency or one of its
32 contractors enters into a contract to purchase an eligible property or
33 mortgage asset for use as affordable housing, the agency or
34 contractor shall provide the municipality in which the property is
35 located a 45-day period of time within which the municipal
36 governing body may:

37 (a) consent or withhold consent to the agency's or contractor's
38 purchase of the eligible property for use as affordable housing, or

39 (b) opt to purchase the property in lieu of the agency or
40 contractor in accordance with the provisions set forth in this
41 section. The municipality may waive these rights through written
42 notice to the agency or, if so designated by the agency, its
43 contractors, prior to the expiration of the 45-day period.

44 (2) Those eligible properties purchased by the qualified
45 community development financial institutions and designated
46 pursuant to this section for use as affordable housing shall be
47 restricted for occupancy as affordable housing for a period of 30

1 years. The restriction shall be set forth in the deed and recorded in
2 the office of the county recording officer of the county wherein the
3 real estate is situated. Affordability controls shall be imposed upon
4 purchase and maintained upon transfer in accordance with the
5 provisions of the Uniform Housing Affordability Controls
6 promulgated by the agency.

7 c. (1) As soon as possible after entering into a contract to
8 purchase an eligible property for use as affordable housing, but not
9 less than five days after the date the agency or its contractors enters
10 into the contract, the agency or its contractors shall provide written
11 notice by personal service or certified mail to the governing body of
12 the municipality within which the eligible property is located. The
13 notice shall inform the municipal governing body of:

14 (a) the agency or contractor's intent to purchase the eligible
15 property and to restrict it for use as affordable housing for 30 years,

16 (b) the municipality's opportunity to consent or to withhold
17 consent to the proposed purchase and dedication of the property for
18 affordable housing,

19 (c) the municipality's opportunity to purchase the eligible
20 property,

21 (d) the municipality's right of first refusal to purchase the
22 property, and

23 (e) the municipality's right to use monies deposited in its
24 affordable housing trust fund.

25 (2) As soon as possible after entering into a contract to purchase
26 an eligible property, but not less than five days after the date the
27 agency or its contractors enters into the contract, the agency or its
28 contractors shall list the property on the Department of the
29 Treasury's website. The listing shall contain basic information
30 about the property, including but not limited to location, condition,
31 and information relating to the estimated fair market value of the
32 property. The agency or its contractors shall make information
33 about the listing available to the agency and, upon request, to
34 municipalities, other public agencies, community development
35 corporations, developers, and qualifying households.

36 (3) The agency or its contractors shall allow public agencies,
37 community development corporations, developers, and qualifying
38 households reasonable access to an eligible property for purposes of
39 inspection.

40 d. (1) In order to consent or withhold consent to the proposed
41 purchase and dedication of an eligible property as affordable
42 housing or exercise its right to purchase an eligible property, the
43 governing body of the municipality shall provide written notice to
44 the executive director of the agency or, if so designated by the
45 agency, its contractors, within 45 days of the municipality's receipt
46 of the notice required pursuant to subsection c. of this section.

1 (2) The governing body of a municipality may adopt a
2 resolution authorizing the mayor or other designated municipal
3 official to respond to notices received pursuant to subsection c. of
4 this section. The resolution may establish parameters for that
5 exercise of authority, including but not limited to the total amount
6 of funds that may be expended and the amount that may be
7 expended for each unit of housing.

8 (3) A municipality may use any available funding sources to
9 purchase eligible properties or mortgage assets through the agency
10 pursuant to this section, except for funds that are dedicated to
11 another purpose by law, covenant, or other obligation.

12 (4) Whenever a municipality does not exercise an option to
13 purchase an eligible property under this section or withhold consent
14 to the proposed purchase and dedication of the property for
15 affordable housing within 45 days of the municipality's receipt of
16 the notice required pursuant to subsection c. of this section, the
17 agency or its contractors may convey the property for occupancy as
18 affordable housing subject to a 30-year deed restriction to another
19 public agency, a community development corporation, a developer,
20 or a qualifying household or the contractors may lease the property
21 for occupancy as affordable housing subject to a 30-year deed
22 restriction. A municipality that does not exercise an option to
23 purchase an eligible property under this section may adopt a
24 resolution authorizing the agency or its contractors to use monies
25 deposited in that municipality's affordable housing trust fund, up to
26 and including the negotiated purchase price of the eligible property,
27 and apply those funds to the purchase of the eligible property.

28 e. Notwithstanding any other provision of this section to the
29 contrary, the agency and, if authorized by contract, its contractors,
30 may purchase, sell, lease, and convey market rate-units without
31 offering those units to the municipality and without imposing
32 affordability controls upon the property if the purchase, sale, lease,
33 and conveyance of those properties as market-rate units satisfy
34 criteria established pursuant to contract in accordance with
35 subsection a. of this section and does not violate the terms of any
36 other provision of law or requirement, including those governing
37 the use of funds used to make the purchase.

38 f. All purchases, sales, leases, and conveyances of property by
39 qualified community development financial institutions exercised
40 pursuant to this section shall be deemed to lessen the burdens of
41 government in furthering the purposes of sections 2 through 14 of
42 P.L. , c. (C.) (pending before the Legislature as this bill).

43
44 9. (New section) a. A municipality that purchases an eligible
45 property pursuant to section 8 of P.L. , c. (C.) (pending
46 before the Legislature as this bill) shall sell and convey or lease the
47 housing unit or units acquired within 60 days of the date of

1 purchase, unless it is not possible to do so due to practical or market
2 conditions. In the event that an eligible property is not conveyed or
3 leased within 180 days of the date of purchase, or remains vacant
4 for a 180-day period during the pendency of affordability controls,
5 the agency may commence proceedings to take control of the
6 property and to sell and convey or lease the property in furtherance
7 of the purposes of sections 2 through 14 of P.L. , c. (C.)
8 (pending before the Legislature as this bill) and deed restrictions of
9 record.

10 b. The governing body of a municipality that purchases an
11 eligible property pursuant to section 8 of P.L. , c. (C.)
12 (pending before the Legislature as this bill) may, by resolution,
13 authorize the private sale and conveyance or the lease of a housing
14 unit or units acquired pursuant to section 8 of P.L. , c. (C.)
15 (pending before the Legislature as this bill). Every deed and rental
16 agreement shall contain a provision specifying the requirement that
17 the housing unit or units shall remain available to low- and
18 moderate-income households for a period of at least 30 years.

19 c. Except as provided in subsection d. of this section, whenever
20 the agency, its contractors, or a municipality purchases an eligible
21 property pursuant to section 8 of P.L. , c. (C.) (pending
22 before the Legislature as this bill) from monies deposited in the
23 municipality's affordable housing trust fund and dedicates the
24 property for affordable housing, as required by section 11 of P.L. ,
25 c. (C.) (pending before the Legislature as this bill), that
26 municipality shall receive two units of credit towards its affordable
27 housing obligation for each unit of affordable housing dedicated
28 and provided.

29 d. The total number of bonus units of credit beyond the actual
30 units of housing provided pursuant to section 9 of P.L. , c. (C.)
31 (pending before the Legislature as this bill) shall not exceed 25
32 percent of whatever the municipality's affordable housing
33 obligation may be. No unit of affordable housing shall receive the
34 bonus units of credit described in section 9 of P.L. , c. (C.)
35 (pending before the Legislature as this bill) in addition to any other
36 type of additional units of credit that may be available towards a
37 municipality's affordable housing obligation.

38
39 10. (New section) The agency and the State Treasurer shall
40 prioritize the allocation of tax-exempt private activity bonds in the
41 amount necessary to effectuate the purposes of sections 2 through
42 14 of P.L. , c. (C.) (pending before the Legislature as this
43 bill) in each fiscal year until the agency ceases operation of the
44 program, provided that the proceeds of tax-exempt private activity
45 bonds to support the purposes of sections 2 through 14 of P.L. , c.
46 (C.) (pending before the Legislature as this bill) shall be
47 limited to contracts with and loans to qualified community

1 development financial institutions pursuant to section 8 of P.L. ,
2 c. (C.) (pending before the Legislature as this bill).

3

4 11. (New section) a. For the purposes of this section:

5 "Foreclosure-impacted municipality" means a municipality that
6 documents a minimum of 10 units of housing that have been
7 foreclosed upon and have remained unsold on a Multiple Listing
8 Service for at least 60 days; and

9 "Units of housing" means units of housing that are not age-
10 restricted and are habitable year-round, including but not limited to,
11 single family homes, condominium units, cooperative units, and
12 mobile homes with at least two bedrooms.

13 b. (1) Prior to the date that a foreclosure-impacted
14 municipality's development fees or payments-in-lieu fees are
15 scheduled to transfer to the "New Jersey Affordable Housing Trust
16 Fund" pursuant to section 8 of P.L.2008, c.46 (C.52:27D-329.2) or
17 section 9 of P.L.2008, c.46 (C.52:27D-329.3), the municipality may
18 adopt a resolution committing the expenditure of municipal
19 affordable housing trust fund monies. If a municipality adopts the
20 resolution to authorize the transfer of its affordable housing trust
21 fund monies to the program within 60 days after the effective date
22 of P.L. , c. (C.) (pending before the Legislature as this bill)
23 for the purposes of the program, the municipality shall be deemed
24 to have committed the funds by the deadline imposed pursuant to
25 section 8 of P.L.2008, c.46 (C.52:27D-329.2) or section 9 of
26 P.L.2008, c.46 (C.52:27D-329.3). These funds shall be used to
27 produce very-low-income, low-income, and moderate-income
28 housing. The resolution shall authorize the transfer of a minimum
29 of \$150,000 from the municipality's municipal affordable housing
30 trust fund to the "Foreclosure to Affordable Housing
31 Transformation Fund" established pursuant to section 12 of P.L. ,
32 c. (C.) (pending before the Legislature as this bill) for use by
33 the agency or its contractors for the provision of affordable housing
34 pursuant to this section and the procedures specified in section 8 of
35 P.L. , c. (C.) (pending before the Legislature as this bill).

36 (2) The resolution may authorize the mayor or other designated
37 municipal official to exercise the municipal powers described in
38 section 8 of P.L. , c. (C.) (pending before the Legislature as
39 this bill). The resolution may establish parameters for that exercise
40 of authority, including but not limited to purchase price levels for
41 the exercise of that power.

42 c. (1) The agency or its contractors shall use funds transferred
43 pursuant to subsection b. of this section to produce very-low-, low-,
44 and moderate-income housing within the municipality transferring
45 funds pursuant to this section, with a deed restriction specifying that
46 the housing unit or units shall remain available to low- and
47 moderate-income households for a period of at least 30 years.

1 (2) If the agency or its contractors are unable to utilize some or
2 all of the funds provided to produce affordable housing within the
3 municipality within two years of the transfer of such funds to the
4 "Foreclosure to Affordable Housing Transformation Fund"
5 established pursuant to section 12 of P.L. , c. (C.) (pending
6 before the Legislature as this bill), the funds shall be returned to the
7 municipality as soon as practicable after the two-year anniversary of
8 such transfer. From the date any such funds are returned to the
9 municipality, the municipality shall be required to commit the funds
10 in accordance with section 8 of P.L.2008, c.46 (C.52:27D-329.2) or
11 section 9 of P.L.2008, c.46 (C.52:27D-329.3), as applicable, within
12 the time constraints set forth in those sections or within six months
13 after the date of transfer of funds back to the municipality,
14 whichever is later.

15 d. Affordable housing created pursuant to this section through
16 the "Foreclosure to Affordable Housing Transformation Fund"
17 established pursuant to section 12 of P.L. , c. (C.) (pending
18 before the Legislature as this bill), shall receive additional
19 affordable housing credit as set forth in subsection c. of section 9 of
20 P.L. , c. (C.) (pending before the Legislature as this bill),
21 even if the municipality does not exercise its right to purchase the
22 property.

23 e. No agency of the State of New Jersey shall take any action
24 to transfer funds from a municipal affordable housing trust fund to
25 the "New Jersey Affordable Housing Trust Fund" established
26 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320) when
27 such funds are designated to effectuate the purposes of sections 2
28 through 14 of P.L. , c. (C.) (pending before the Legislature
29 as this bill) during the timeframes established in this section.
30 Nothing in sections 2 through 14 of P.L. , c. (C.) (pending
31 before the Legislature as this bill) shall be construed as requiring
32 the State to spend monies that have been deposited in the General
33 Fund to effectuate the purposes of sections 2 through 14 of P.L. ,
34 c. (C.) (pending before the Legislature as this bill).

35
36 12. (New section) a. There is established within the agency a
37 "Foreclosure to Affordable Housing Transformation Fund," which
38 shall be a non-lapsing, revolving fund and which shall be the
39 repository for funds appropriated or otherwise made available for
40 the purposes of sections 2 through 14 of P.L. , c. (C.)
41 (pending before the Legislature as this bill), and any interest earned
42 thereon. The fund shall be administered by the agency, in
43 accordance with its authority under section 5 of P.L.1983, c.530
44 (C.55:14K-5) to manage funds for housing programs.

45 b. The agency may transfer into the "Foreclosure to Affordable
46 Housing Transformation Fund" any amounts held or received by the
47 agency that may be used for the production of affordable housing

1 and that is needed by the agency or its contractors for the purchase
2 of eligible property. Subject to the provisions of sections 20
3 through 28 of P.L.1983, c.530 (C.55:14K-20 through C.55:14K-28),
4 the agency is authorized to issue its bonds to fund the activities of
5 the program; provided, however, that tax-exempt bonds shall only
6 be issued consistent with the requirements of section 10 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill).

8 c. In any year in which the proceeds from the receipts of the
9 additional fee collected pursuant to paragraph (2) of subsection a. of
10 section 3 of P.L.1968, c.49 (C.46:15-7) exceeds \$75 million, the
11 first \$10 million above the \$75 million collected shall be transferred
12 into the "Foreclosure to Affordable Housing Transformation Fund"
13 for the purposes of the production of affordable housing.

14 d. Notwithstanding any provision of law to the contrary, the
15 Commissioner of Community Affairs may transfer into the
16 "Foreclosure to Affordable Housing Transformation Fund" amounts
17 held for the production of affordable housing and not designated for
18 a specific purpose beyond the overall production of affordable
19 housing by the annual budget, including but not limited to monies
20 deposited in the "New Jersey Affordable Housing Trust Fund,"
21 which amounts are needed by the agency for the purchase of
22 eligible property. The commissioner shall consider the transfer of
23 funds from the "New Jersey Affordable Housing Trust Fund" to the
24 "Foreclosure to Affordable Housing Transformation Fund" as a
25 priority for funding until the agency ceases the program's
26 operations.

27 e. All amounts deposited into the "Foreclosure to Affordable
28 Housing Transformation Fund" that are derived from federal
29 funding sources or are otherwise dedicated to the production of
30 affordable housing shall be used exclusively for the production of
31 affordable housing. The agency may use other funds for the
32 production of affordable housing or market rate housing.

33 f. The agency may use annually up to three percent of the
34 monies available in the fund for the payment of any necessary
35 administrative costs related to the administration of sections 2
36 through 14 of P.L. , c. (C.) (pending before the Legislature
37 as this bill).

38
39 13. (New section) a. On or before the last day of March in each
40 year, the agency shall make an annual report of the program's
41 activities for the preceding calendar year, and the program's
42 planned activities for the current and following calendar year, to the
43 Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
44 19.1), to the Legislature. The agency shall display the annual
45 reports on the agency's website.

46 b. Each annual report shall set forth the current nature and
47 extent of foreclosure activity in New Jersey and shall depict

1 changes in foreclosure activity from the prior calendar year. The
2 report shall set forth a complete operating and financial statement
3 covering the program's operations, transactions, and holdings
4 during the preceding year, including but not limited to:

5 (1) the total number of re-capitalized market rate units; and

6 (2) the total numbers of very-low-income, low-income, and
7 moderate-income units that were produced for sale and for rental in
8 the preceding year pursuant to sections 2 through 14 of P.L. ,
9 c. (C.) (pending before the Legislature as this bill), their
10 locations by municipality, and the sources of financing used.

11
12 14. (New section) The agency shall cease the program's
13 operations on December 31, 2017. On that date, any assets,
14 liabilities, properties, or funds held by the agency shall transfer to
15 other authorized programs operated by the agency.

16
17 15. This act shall take effect immediately.
18
19

20 STATEMENT

21
22 This bill extends the moratorium on the imposition of fees on
23 non-residential construction projects and creates the "New Jersey
24 Residential Foreclosure Transformation Act."

25 The bill amends P.L.2008, c.46 to extend for two and a half
26 years, until January 1, 2016, the moratorium on the imposition of
27 fees on non-residential construction projects. The fees, known as
28 the Statewide non-residential development fees, were enacted as
29 part of a revision of the "Fair Housing Act," pursuant to P.L.2008,
30 c.46. A moratorium was placed on the imposition of the fees until
31 July 1, 2010, pursuant to the "Economic Stimulus Act of 2009,"
32 P.L.2009, c.90. In 2011, the moratorium on the imposition of the
33 fees was extended by two years, until July 1, 2013, pursuant to
34 P.L.2011, c.122.

35 Sections 2 through 14 of the bill create the "New Jersey
36 Residential Foreclosure Transformation Act," which establishes the
37 "New Jersey Foreclosure Transformation Program" as a temporary
38 program within the New Jersey Housing and Mortgage Finance
39 Agency (HMFA) for the purpose of purchasing foreclosed
40 residential properties from institutional lenders and dedicating the
41 properties for occupancy as affordable housing. The HMFA is to
42 cease the program's operations on December 31, 2017.

43 The bill empowers the HMFA to purchase foreclosed residential
44 properties and mortgage assets from institutional lenders in order to
45 produce affordable housing and dedicate it as such for 30 years.
46 The bill directs the HMFA to enter into contracts or loans, or both,
47 with no more than two experienced, financially sophisticated,

1 community development financial institutions to enhance the ability
2 of the HMFA to fulfill its purpose of producing affordable housing.

3 Under the bill, the HMFA or, if applicable, one of its contractors,
4 is to give the municipality in which the property is located a right to
5 consent or withhold consent to the proposed purchase and
6 dedication of the property as affordable housing and also provide
7 the municipality a right of first refusal to purchase the property and
8 dedicate it as affordable housing. A municipality may exercise its
9 right to purchase and dedicate eligible property for affordable
10 housing, decline the option to purchase, or decline to exercise the
11 option but, instead, authorize the HMFA or its contractors to use
12 monies from the municipality's affordable housing trust fund to
13 purchase the property.

14 The bill provides that whenever a municipality does not exercise
15 its right of first refusal to purchase a property, the HMFA may
16 purchase the property and convey it to another public agency, a
17 community development corporation, a developer, or a qualifying
18 household for occupancy as affordable housing subject to a 30-year
19 deed restriction. The power of the HMFA to acquire real property
20 under the bill is to be limited to short-term purchases, of no more
21 than 60 days, to facilitate prompt conveyance of the property to
22 another public agency, a community development corporation, a
23 developer, or a qualifying household for occupancy as affordable
24 housing subject to a 30-year deed restriction. Every contract for the
25 acquisition of real property entered into by the HMFA, and every
26 deed conveying real property to the HMFA, must provide that if the
27 HMFA holds title to the property on the 61st day after the date of
28 the deed, all rights, title, and interest conveyed to the HMFA will
29 automatically revert to and vest in the grantor without the necessity
30 of any further act on the part of or on behalf of the grantor. The bill
31 requires the HMFA to execute and deliver a confirmatory deed back
32 to the grantor of property in the event that the title to the property
33 reverts to the grantor.

34 The bill provides that whenever the HMFA, its contractors, or a
35 municipality purchases an eligible property using monies deposited
36 in a municipality's affordable housing trust fund, the municipality is
37 to receive two units of credit toward any Council on Affordable
38 Housing-imposed obligation to provide affordable housing for each
39 eligible unit of affordable housing dedicated and provided. The bill
40 awards municipalities additional units of credit, above the actual
41 number of dedicated affordable housing units produced, as an
42 incentive for municipalities to authorize the use of their affordable
43 housing trust fund monies for the purchase of eligible properties
44 and to dedicate them as affordable housing.

45 The bill further provides that the number of additional units of
46 credit that a municipality can receive towards its affordable housing
47 obligation for property purchased and dedicated as affordable

1 housing under the bill cannot exceed 25 percent of the
2 municipality's affordable housing obligation and that a municipality
3 cannot receive both additional units of credit for producing a unit of
4 affordable housing under this bill, and additional units of credit for
5 that unit under another provision of law.

6 The bill establishes a mechanism through which a “foreclosure-
7 impacted municipality,” one that has 10 or more foreclosed homes
8 listed on a multiple listing service for at least 60 days, can insulate
9 its affordable housing trust funds from the laws that will require the
10 transfer of its trust fund monies to the “New Jersey Affordable
11 Housing Trust Fund.” A foreclosure-impacted municipality can
12 accomplish this by adopting a resolution committing the
13 expenditure of its municipal affordable housing trust fund monies
14 for the production of affordable housing and authorizing the
15 transfer of at least \$150,000 of its municipal affordable housing
16 trust fund monies to the HMFA for the HMFA to use to produce
17 affordable housing. If a municipality adopts the resolution to
18 authorize the transfer within 60 days after the effective date of the
19 bill, the municipality shall be deemed to have committed the funds
20 by the deadline imposed pursuant to section 8 of P.L.2008, c.46
21 (C.52:27D-329.2) or section 9 of P.L.2008, c.46 (C.52:27D-329.3).

22 The bill requires the HMFA to use funds transferred from a
23 foreclosure-impacted municipality to produce affordable housing
24 within that municipality. If the HMFA is unable to use all of the
25 transferred funds within two years of the date of transfer, the
26 HMFA is to return the remaining funds to the municipality and the
27 municipality would have at least six months from the date the funds
28 are returned to commit the funds in accordance with other
29 provisions of law. During this time period, all municipal trust fund
30 monies designated for the purchase of foreclosed properties would
31 be protected from transfer to the State. A municipality would
32 receive bonus credits, as otherwise provided in the bill, for
33 affordable housing produced by the HMFA or by one of its
34 contractors pursuant to this mechanism.

35 The bill would allow the HMFA to establish criteria to identify
36 the circumstances when the purchase, sale, lease, or conveyance of
37 market-rate units furthers the purposes of the HMFA. The HMFA
38 itself, or through its contractors, would be able to purchase, sell,
39 lease, or convey market-rate units in accordance with those criteria
40 without imposing affordability controls upon the property as long as
41 the transaction does not violate the terms of any other provision of
42 law or requirement.

43 The bill establishes the “Foreclosure to Affordable Housing
44 Transformation Fund,” a non-lapsing, revolving fund to serve as the
45 repository for funds appropriated or otherwise made available for
46 the HMFA to fulfill its purposes. The HMFA will administer the
47 fund and the bill authorizes the HMFA to transfer into the fund any

1 amounts it has that may be used for the production of affordable
2 housing. The bill authorizes the HMFA to issue bonds to fund the
3 activities of the program. The bill calls for prioritization of the
4 allocation of tax-exempt private activity bonds to allow the HMFA
5 to fulfill the purposes of the bill.

6 Under the bill, in any year in which the proceeds from the Realty
7 Transfer Fee additional fee, paid pursuant to paragraph (2) of
8 subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), exceeds
9 \$75 million, the first \$10 million above the first \$75 million
10 collected will be transferred into the “Foreclosure to Affordable
11 Housing Transformation Fund” for the purposes of the production
12 of affordable housing. The bill authorizes the Commissioner of
13 Community Affairs to transfer into the fund certain amounts held
14 for the production of affordable housing, including, but not limited
15 to, monies deposited in the “New Jersey Affordable Housing Trust
16 Fund.”

17 The bill provides that amounts deposited in the fund that are
18 derived from federal funding sources or are otherwise dedicated to
19 the production of affordable housing must be used for the
20 production of affordable housing. However, the bill allows the
21 HMFA to use other funds for the production of affordable housing
22 or market-rate housing and allows the HMFA to use annually up to
23 three percent of fund monies for administrative cost.

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