

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5130

STATE OF NEW JERSEY

DATED: FEBRUARY 11, 2021

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 5130 (1R).

This bill, to be known and cited as the “New Jersey Foreclosure Prevention Act,” would establish the “New Jersey Residential Foreclosure Prevention Program,” within the New Jersey Housing and Mortgage Finance Agency (“HMFA”). The goal of the program would be to ensure that loss mitigation and foreclosure prevention measures are taken on eligible properties. Either directly, or through its contractors, the bill authorizes the agency to purchase “eligible properties” and mortgage assets in furtherance of this goal. The bill defines an “eligible property” as a residential property or mortgage note owned by an institutional lender as the result of a mortgage foreclosure judgment or a deed in lieu of foreclosure, owned by a municipality as the result of a tax foreclosure judgment, or that is subject to a nonperforming loan from an institutional lender.

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

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

The bill would authorize HMFA to enter into contracts or loans, or both, with no more than two qualified community development financial institutions to negotiate, bid for, and purchase eligible properties and mortgage assets for the purpose facilitating the

program. In selecting contractors from among qualified community development financial institutions, the bill would authorize HMFA to accord a strong preference to qualified community development financial institutions that have substantial experience in lending in the State and substantial knowledge of the State's real estate markets. HMFA may enter into contracts or loans, or both, with a partnership or consortia of organizations, as long as a qualified community development financial institution is the lead entity, or a partnership or consortia of multiple qualified community development financial institutions.

Should HMFA contract with a community development financial institution for the purposes of the bill, the contract would be required to specify the amounts, schedules, and types of funding to be provided to the qualified community development financial institution, the repayment schedule for the portion of that funding to be repaid, and targeted goals for homeowner interventions. HMFA would be permitted to condition funding and goals upon the availability of funds to the program. The contract would specify reasonable administrative costs sufficient to enable the qualified community development financial institution to exercise its obligations under the bill. The contract would set forth criteria for instances when the purchase, sale, lease, and conveyance of properties furthers the purposes of the bill.

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

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

The bill would require a sheriff to collect a new \$350 fee to be collected at sheriff's sales. Revenue generated through the fee exceeding the funding plan developed under the bill could be appropriated by HMFA for additional foreclosure prevention programs.

The bill would authorize the agency to make grants to eligible applicants, including, but not limited to, non-profit housing sponsors, municipalities or other governmental entities utilizing funds provided by the bill, or otherwise made available to HMFA. HMFA would establish regulations, procedures or guidelines governing the qualifications of applicants, the application procedures and the criteria

for awarding grants to such eligible applicants and the standards for establishing the amount, terms and conditions of each grant.

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

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

As reported, this bill is identical to Senate Bill No. 3244 (1R), as also reported by the committee on this date.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill will result in indeterminate annual increases to New Jersey Housing and Mortgage Finance Agency (HMFA) expenditures and revenues, and a minimal impact on county finances.

The OLS estimates that the establishment of the New Jersey Residential Foreclosure Prevention Program will lead to an indeterminate increase in annual expenditures due to increased administrative costs for the HMFA. The HMFA could incur additional expenditures from potentially defending and indemnifying the federal government for financial impacts arising as a direct result of a community development financial institution's agreements with the HMFA.

The bill also requires a county sheriff or officer conducting a sheriff's sale to charge a \$350 per sale amount to be directed to the Foreclosure Intervention Fund established under the bill. The OLS believes the \$350 fee will lead to an indeterminate increase in State revenues. The OLS is unable to locate precise data on how many sheriff's sales this would impact. The HMFA could realize additional revenues from the repayment of loans to the agency by community development financial institutions.

The county sheriff or officer carrying out the sale would be responsible for collecting the \$350 fee and would deduct any actual administrative costs incurred prior to transmitting the monies collected to the fund. The OLS believes the annual impact to county finances would be minimal.