

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1149

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 6, 2022

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1149 (1R), with committee amendments.

As amended, this bill enhances the guidance provided to local government for establishing property registration policies to address the risk of blight.

Within 10 days after serving a summons and complaint in a foreclosure action on a commercial property, this bill requires a creditor to notify the municipal clerk and mayor or other chief executive of the municipality. This notice would contain the full name, and contact information for the representative of the creditor who is responsible for receiving property maintenance and code violation complaints, the person retained by the creditor for property care, maintenance, security or upkeep. Regarding out-of-State creditors, the bill also requires contact information to be provided for an in-State representative. The bill also requires the creditor to provide prompt notification of any change to the initially-provided contact information.

The bill further requires that, within 30 days following its effective date, a creditor that has initiated a foreclosure proceeding on a commercial property would provide the municipal clerk with a listing of all commercial properties in the municipality for which the creditor has foreclosure actions pending.

The bill requires the municipal clerk, or other responsible local official to notify a foreclosing creditor, or their representative or agent as applicable, in the event that a commercial property in foreclosure becomes vacant and the exterior of the property is found to be a nuisance or in violation of any applicable State or local code. The creditor would have the equivalent responsibility to abate the nuisance or correct the violation as the title owner, to the applicable standards. The municipality would include a description of the conditions that gave rise to the violation and would provide a period of not less than 30 days from the creditor's receipt of the notice for the creditor to remedy the violation. If the creditor fails to remedy the violation within that time period, the bill permits the municipality to impose

authorized penalties. If the municipality expends public funds in order to abate a nuisance or correct a violation on a commercial property in situations in which the creditor was given appropriate notice, but failed to abate the nuisance or correct the violation as directed, the bill provides the municipality with the same recourse against the creditor as it would have against the title owner of the property to impose a lien pursuant to N.J.S.A.55:19-100.

This bill additionally repeals N.J.S.A.40:48-2.12s, an existing section of law concerning property registration, and replaces it with a new section to enhance clarity. This provision of the bill expressly authorizes a municipality to adopt an ordinance to: (1) create a property registration program for the identification and monitoring of residential and commercial properties in foreclosure; (2) regulate the care, maintenance, security, and upkeep of the exterior of vacant and abandoned residential and commercial properties in foreclosure; and (3) impose property registration fees on creditors, on an annual or semi-annual basis. The bill requires an ordinance adopted for these purposes to:

(1) require the creditor filing a summons and complaint in an action to foreclose to register the residential or commercial property with the municipality's property registration program as a property in foreclosure;

(2) require the creditor to promptly update the property registration program in the event of a change in the contact information of a representative, agent, or individual authorized to accept service on behalf of a creditor required to register under the property registration program;

(3) require the creditor filing a summons and complaint in an action to foreclose to, if the registered property becomes vacant and abandoned, update the property registration with the municipality to reflect the change in the property's status;

(4) require that the creditor filing a summons and complaint in an action to foreclose would be responsible for the care, maintenance, security, and upkeep of the exterior of the property if the property is vacant and abandoned at any time while the property is registered with the property registration program;

(5) require a creditor located out-of-State shall to responsible for appointing an in-State representative or agent to act for the foreclosing creditor;

(6) identify any requirements that the municipality imposes on the creditor filing a summons and complaint in an action to foreclose on a property, that is or becomes vacant and abandoned, relating to the care, maintenance, security, and upkeep of the exterior of the property, including, but not limited to, any requirements to secure the property against unauthorized entry, post a sign affixed to the inside of the property and visible to the public indicating the name, address, and telephone number of the creditor or an out-of-State creditor's in-State

representative or agent for the purpose of receiving service of process, or acquire and otherwise maintain liability insurance by procuring a vacancy policy, covering any damage to any person or any property caused by any physical condition of the property;

(7) identify any fees that may be imposed on the creditor in connection with the property registration program; and

(8) define the criteria, in accordance with guidance provided in the bill, under which a property would be considered vacant and abandoned.

The bill requires a property registration ordinance to authorize a public officer or appropriate public official to issue a notice to a foreclosing creditor, if determined to be in violation of the ordinance. In the case of a violation for failure to provide care, maintenance, security, and upkeep of the exterior of vacant and abandoned property, the notice would require the violation to be corrected within 30 days of receipt of the notice, or within 10 days of receipt of the notice if the violation presents an imminent threat to public health and safety.

The bill permits a municipality to contract with and set the compensation of a private entity, pursuant to the “Local Public Contracts Law,” N.J.S.A.40A:11-1 et seq., to assist in the implementation and administration of the property registration program. The municipality would be able to delegate to the private entity any duties under the program, including, identifying properties subject to the registration requirements, maintaining and updating property registrations, communicating with creditors or appropriate representatives, invoicing and collecting payment from the creditors for such properties, and monitoring compliance. The bill restricts the authority of private contractors to retain fees, and expressly authorizes the Local Finance Board to adopt regulations concerning property registration contracts. The bill expressly authorizes shared service agreements with other local units.

The bill authorizes a municipality to impose an annual fee on a creditor required to register a property under the associated ordinance. The fee would not exceed: (1) \$500 per property annually for any property that is required to be registered because a summons and complaint in an action to foreclose was filed by the creditor; and (2) an additional \$2,000 per property annually if the property is vacant or abandoned when the summons and complaint in an action to foreclose is filed, or becomes vacant and abandoned, as defined in the associated ordinance, at any time thereafter while the property is in foreclosure.

The bill additionally directs that an out-of-State creditor subject to an ordinance adopted pursuant to the bill found by a court of competent jurisdiction, to be in violation of the requirement to appoint an in-State representative or agent pursuant to the ordinance, would be subject to a fine of \$2,500 for each day of the violation. A creditor found by a court of competent jurisdiction to be in violation of certain

other aspects of the ordinance would be subject to a fine of \$1,500 for each day of the violation.

The bill will take effect immediately, except that municipalities with existing property registration programs would be provided until the first day of the seventh month next following the effective date to amend those ordinances to the extent necessary to make consistent with this bill.

As amended, this bill is identical to Assembly Bill No. 2877 (2R), which was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) omit the substantive provisions of the prior reprint of the bill, making substantive additions as provided for in the bill and changing the bill from establishing a registration requirement for all vacant and abandoned properties, to establishing the initiation of a foreclosure action as an event that requires a commercial property creditor to notify municipal officials of certain information concerning their representatives' identities and that of the property in foreclosure;

(2) model the requirement to register commercial property in foreclosure on a similar requirement for residential property under N.J.S.A.46:10B-51;

(3) add a findings and declarations section;

(4) repeal N.J.S.A.40:48-2.12s and recodify that section of law with substantive and technical changes as provided for in the bill, and amend existing law to reference the appropriate recodified provisions of this bill instead of N.J.S.A.40:48-2.12s, as necessary; and

(5) revise the title, synopsis and effective date of the bill.

FISCAL IMPACT:

Fiscal information is currently unavailable for this bill.