LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

Senate, No. 1513

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: AUGUST 5, 2020

SUMMARY

Synopsis: Establishes the "New Jersey Residential Foreclosure Transformation Act."

Type of Impact: Annual New Jersey Housing and Mortgage Finance Agency expenditure and revenue increases; annual local government expenditure increases; potential annual State revenue loss

Agencies Affected: New Jersey Housing and Mortgage Finance Agency, New Jersey Affordable Housing Trust Fund, Department of Community Affairs, municipalities.

Office of Legislative Services Estimate

Fiscal Impact	Annual
NJ Housing and Mortgage Finance Agency Expenditure Increase	Indeterminate
NJ Housing and Mortgage Finance Agency Revenue Increase	Indeterminate
Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill would result in indeterminate annual expenditure and revenue increases for the New Jersey Housing and Mortgage Finance Agency (HMFA) and annual local government expenditure increases. The magnitude of these impacts will depend largely on current and future foreclosure activity in the State, the number of properties purchased by the HMFA and their associated costs, and the extent of local participation in the New Jersey Residential Foreclosure Transformation Program established in the bill. None of these factors can be accurately estimated by the OLS at the present time.

- Under the bill, the HMFA may experience an annual increase in expenditures associated with the operation of the program. The HMFA is required to adopt a funding plan for the program utilizing resources in the Foreclosure to Affordable Housing Transformation Fund created by the bill. The HMFA may directly finance the purchase of foreclosed properties and mortgage assets through (1) revenue generated from the fund; (2) money appropriated to the fund; (3) a

transfer of at least $150,000 from a municipal affordable housing trust fund; and (4) a discretionary consideration of $350 per sheriff property sale. The HMFA is permitted to expend not more than 15% of monies in the fund for administrative purposes.

- The OLS also notes that the enactment of the bill could result in increased expenditures for certain municipalities that elect to finance the purchase of foreclosed property using their affordable housing trust fund monies. The bill provides that municipalities have the right of first refusal and may purchase an eligible property identified by the HFMA for purchase and dedicate it as affordable housing.

- The bill may increase HMFA revenues as it permits the transfer of municipal affordable housing trust fund monies to the agency in exchange for credits against its fair share affordable housing obligation. These trust fund monies may have otherwise been spent by those municipalities for general affordable housing purposes or possibly forfeited to the State if not expended within four years of their receipt.

- The OLS notes that municipalities are not required to commit any current or future resources to support the purposes of the bill, although the bill provides incentives for them to do so. To the extent funds are transferred to the Foreclosure to Affordable Housing Transformation Fund that would have been remitted to the Affordable Housing Trust Fund (AHTF), the State would lose revenue it might otherwise have received. However, the OLS is not aware of any instances in which municipal affordable housing trust fund money has been forfeited to the State because they were not expended.

BILL DESCRIPTION

This bill establishes the New Jersey Residential Foreclosure Transformation Program within the HMFA for the purpose of purchasing eligible properties, including foreclosed residential properties from institutional lenders, properties owned by municipalities as a result of tax foreclosure, and certain properties subject to a nonperforming loan, and dedicating the properties for occupancy as affordable housing. The bill allows HMFA to establish criteria to identify the circumstances when the purchase, sale, lease, or conveyance of market-rate units furthers the purposes of the program.

The bill empowers HMFA to purchase eligible properties to produce affordable housing and dedicate it for those purposes for up to 30 years. The bill authorizes HMFA to enter into contracts or loans, or both, with no more than two experienced, financially sophisticated, community development financial institutions to enhance the ability of the HMFA to fulfill its purpose of producing affordable housing.

If HMFA or its contractors purchase an eligible property from monies deposited in a municipality's affordable housing trust fund, the municipality would receive two units of credit against its fair share affordable housing obligation for each eligible property sold or conveyed as a for-sale unit or leased as rental housing; for each unit of affordable housing dedicated for permanent supportive housing, other than supportive shared living housing; and for each new bedroom dedicated in supportive shared living housing. A written notice must be sent to the governing body informing it of the municipality's opportunity to purchase the eligible property, the municipality's right of first refusal to purchase the property, and the municipality's right to use monies deposited in its affordable housing trust fund, except that the written notice would not be

required if the eligible property is already owned by the municipality as a result of a tax foreclosure judgment.

The bill provides that the number of additional units of credit that a municipality may receive towards its affordable housing obligation for property purchased and dedicated as affordable housing under the bill cannot exceed 25% of the municipality's new construction affordable housing obligation. The bill specifies that a municipality cannot receive both additional units of credit for producing a unit of affordable housing under this bill, and additional units of credit for that unit under another provision of law.

The bill establishes a mechanism through which a “foreclosure impacted municipality," one that has 10 or more foreclosed homes listed on a multiple listing service for at least 60 days, can insulate its affordable housing trust funds from the laws that require the transfer of its trust fund monies to the New Jersey Affordable Housing Trust Fund. A foreclosure-impacted municipality can accomplish this by adopting a resolution committing the expenditure of its municipal affordable housing trust fund monies for the production of affordable housing and authorizing the transfer of at least $150,000 of its municipal affordable housing trust fund monies to HMFA for the production of affordable housing.

The bill requires HMFA to use funds transferred from a foreclosure-impacted municipality to produce affordable housing within that municipality. If the HMFA is unable to use all of the transferred funds within two years of the date of transfer, HMFA will return the remaining funds to the municipality and the municipality will have at least six months from the date the funds are returned to commit the funds in accordance with other provisions of law. During the timeframes designated to effectuate the purposes of the bill, all municipal affordable housing trust fund monies designated for the purchase of foreclosed properties under the bill would be protected from transfer to the State.

The bill establishes the Foreclosure to Affordable Housing Transformation Fund, to be administered by HMFA, and to serve as the repository for funds appropriated or made available for the program. The bill requires the sheriff or officer, when calculating the amount due at a sheriff’s sale, to consider an additional $350 per sale for certain sales, to be utilized by the fund, or by other foreclosure prevention programs as determined by HMFA.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill would result in indeterminate annual HMFA expenditure and revenue increases and annual local government expenditure increases. The HMFA may experience an increase in expenditures, offset in part by the transfer of municipal affordable housing trust fund proceeds, related to the operations of the Foreclosure to Affordable Housing Transformation Fund and the production of affordable housing. The magnitude of these increases will depend largely on current and future foreclosure activity in the State, the number of properties purchased by the HMFA and the associated costs, and the extent of local participation in the program established in the bill. The bill also may result in the redirection of State monies that could be used for general affordable housing purposes towards the purchase of foreclosed properties that would be either sold or leased as affordable housing.

Under the bill, the HMFA is required to adopt a funding plan for the New Jersey Residential Foreclosure Transformation Program utilizing the fund. The HMFA may directly finance the fund through (1) revenue generated from the fund; (2) money transferred to the fund and its earned interest; (3) a transfer of at least $150,000 from a municipal affordable housing trust fund; and (4) a discretionary consideration of $350 per sheriff property sale . The HMFA is permitted to expend not more than 15% of monies in the fund for administrative purposes.

The bill permits a "foreclosure impacted municipality" to insulate its affordable housing trust fund monies from laws that require the transfer of those funds to the New Jersey Affordable Housing Trust Fund by: committing to expend municipal affordable housing trust fund monies for the production of affordable housing, and pledging to transfer at least $150,000 of its trust fund monies to HMFA for the production of affordable housing. According to an OLS document from 2014, 295 municipalities were authorized at that time to maintain their own affordable housing trust funds with a total balance of $156.7 million. Data collected by the Department of Community Affairs (DCA) indicated that 162 municipalities have at least $150,000 in affordable housing monies remaining to be spent. If all 162 municipalities were “foreclosure-impacted” and dedicated the required minimum of $150,000 to the HMFA, provided that these balances are not already needed for another legally authorized purpose, $24.3 million would be made available to the HMFA for affordable housing production. In response to a previous OLS request for updated trust fund balance information, the DCA noted that due to the courts administering the affordable housing certification process, municipalities are no longer required to report their trust fund balances to the department. Municipalities are also permitted to expend not more than 20% of the revenues collected from development fees for administrative purposes.

The OLS cannot determine the amount of municipal affordable housing trust fund monies that will be made available to support the purposes of the bill. This legislation is permissive with regard to the use of municipal affordable housing trust fund resources for the purchase of eligible properties and affordable housing production. If the HMFA purchases an eligible property from monies deposited in the municipality’s affordable housing trust fund, the municipality would receive two units of credit towards its fair share affordable housing obligation for each eligible property sold or conveyed as a for-sale unit or leased as rental housing; for each unit of affordable housing dedicated for permanent supportive housing, other than supportive shared living housing; and for each new bedroom dedicated in supportive shared living housing. Additional credits authorized under the bill may not exceed 25% of the municipality’s total cumulative new construction affordable housing obligation, when combined with any other additional credits authorized under current law. Any municipality taking advantage of the bonus credit provisions under the bill could see decreases in their affordable housing unit obligation, thereby reducing the amount of monies to be spent to satisfy that obligation.

Similarly, the bill provides that a foreclosure-impacted municipality can insulate monies held in its affordable housing trust fund from the laws that require the transfer of a municipality's trust fund monies to the New Jersey Affordable Housing Trust Fund (if not committed for expenditure within four years from the date of collection) by pledging and transferring at least $150,000 from the municipality's affordable housing trust fund to HMFA to be used for the production of affordable housing. While this provision of the bill would appear to potentially cause a reduction in revenue to the AHTF in fact, recent court decisions have enjoined the State from attempting to seize monies from municipal affordable housing trust funds. Furthermore, while the courts have retained jurisdiction over the use and disposition of municipal trust funds, OLS is not aware of any instances in which the State or the courts have ordered the seizure of local trust fund monies under these sections of law.

Additionally, since March 19, 2020 and as of July 29, 2020, Executive Order 106 of 2020 implemented a broad eviction moratorium lasting no longer than two months following the later

of the conclusion of the Public Health Emergency or State of Emergency. This could potentially delay funds from a sale by virtue of execution if the sheriff or officer were to consider allocating $350 per sale to the Fund.

Finally, the HMFA is a financially self-supporting affiliate of the DCA and does not regularly revert revenues back to the department. Financial losses or gains from the bill, as it pertains to the HMFA, would likely not directly impact the DCA's budget.

Section:	*Local Government*
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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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