SENATE, No. 2544

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 8, 2020

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)
Senator NELLIE POU
District 35 (Bergen and Passaic)

SYNOPSIS

Expands financing opportunities for low and moderate income housing.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 10/22/2020)

AN ACT concerning financing for affordable housing and amending and supplementing chapter 14K of Title 55 of the Revised Statutes.

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

1. Section 3 of P.L.1983, c.530 (C.55:14K-3) is amended to read as follows:

3. As used in this act:

a. "Agency" means the New Jersey Housing and Mortgage Finance Agency as consolidated by section 4 of P.L.1983, c.530 (C.55:14K-4), or, if that agency shall be abolished by law, the person, board, body or commission succeeding to the powers and duties thereof or to whom its powers and duties shall be given by law.

b. "Boarding house" means any building, together with any related structure, accessory building, any land appurtenant thereto, and any part thereof, which contains two or more units of dwelling space arranged or intended for single room occupancy, exclusive of any such unit occupied by an owner or operator, including:

(1) any residential hotel or congregate living arrangement, but excluding any hotel, motel or established guesthouse wherein a minimum of 85% of the units of dwelling space are offered for limited tenure only; (2) a residential health care facility as defined in section 1 of P.L.1953, c.212 (C.30:11A-1) or licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.); (3) any resource family home as defined in section 1 of P.L.1962, c.137 (C.30:4C-26.1); (4) any community residence for the developmentally disabled as defined in section 2 of P.L.1977, c.448 (C.30:11B-2); (5) any dormitory owned or operated on behalf of any nonprofit institution of primary, secondary or higher education for the use of its students; (6) any building arranged for single room occupancy wherein the units of dwelling space are occupied exclusively by students enrolled in a full-time course of study at an institution of higher education approved by the Department of Higher Education; and (7) any facility or living arrangement operated by, or under contract with, any State department or agency.

c. "Bonds" mean any bonds, notes, bond anticipation notes, debentures or other evidences of financial indebtedness issued by the agency pursuant to this act.

d. "Continuing-care retirement community" means any work or undertaking, whether new construction, improvement or rehabilitation, which may be financed in part or in whole by the agency and which is designed to complement fully independent

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 <u>thus</u> is new matter.

residential units with social and health care services (usually including nursing and medical services) for retirement families and which is intended to provide continuing care for the term of a contract in return for an entrance fee or periodic payments, or both, and which may include such appurtenances and facilities as the agency deems to be necessary, convenient or desirable.

e. "Eligible loan" means a loan, secured or unsecured, made for the purpose of financing the operation, maintenance, construction, acquisition, rehabilitation or improvement of property, or the acquisition of a direct or indirect interest in property, located in the State, which is or shall be: (1) primarily residential in character or (2) used or to be used to provide services to the residents of an area or project which is primarily residential in character. The agency shall adopt regulations defining the term "primarily residential in character," which may include single-family, multi-family and congregate or other single room occupancy housing, continuing-care retirement communities, assisted living communities, mobile homes and nonhousing properties and facilities which enhance the livability of the residential property or area; and specifying the types of residential services and facilities for which eligible loans may be made, which may include, but shall not be limited to, parking facilities, streets, sewers, utilities, and administrative, community, educational, welfare and recreational facilities, food, laundry, health and other services and commercial establishments and professional offices providing supplies and services enhancing the area. The term "loan" includes an obligation the return on which may vary with any appreciation in value of the property or interest in property financed with the proceeds of the loan, or a co-ventured instrument by which an institutional lender or the agency assumes an equity position in the property. Any undivided interest in an eligible loan shall qualify as an eligible loan.

f. "Family" means two or more persons who live or expect to live together as a single household in the same dwelling unit; but any individual who (1) has attained retirement age as defined in section 216a of the federal Social Security Act, or (2) is under a disability as defined in section 223 of that act, or (3) such other individuals as the agency by rule or regulation shall include, shall be considered as a family for the purpose of this act; and the surviving member of a family whose other members died during occupancy of a housing project shall be considered as a family for the purposes of permitting continued occupancy of the dwelling unit occupied by such family.

g. "Gross aggregate family income" means the total annual income of all members of a family, from whatever source derived, including but not limited to, pension, annuity, retirement and social security benefits; except that there may be excluded from income (1) such reasonable allowances for dependents, (2) such reasonable allowances for medical expenses, (3) all or any proportionate part

of the earnings of gainfully employed minors, or (4) such income as is not received regularly, as the agency by rule or regulation may determine.

h. "Housing project" or "project" means any work or undertaking, ⟦other than a continuing-care community,⟧ whether new construction, improvement, rehabilitation, or acquisition of existing buildings or units which is designed for the primary purpose of providing multi-family rental housing or acquisition of sites for future multi-family rental housing.

i. "Housing sponsor" means any person, partnership, corporation or association, whether organized as for profit or not for profit, to which the agency has made or proposes to make a loan, either directly or through an institutional lender, for a housing project.

j. "Institutional lender" means any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association maintaining an office in the State, or any insurance company or any mortgage banking firm or mortgage banking corporation authorized to transact business in the State.

k. "Life safety improvement" means any addition, modification or repair to a boarding house which is necessary to improve the life safety of the residents of the boarding house, as certified by the Department of Community Affairs, including, but not limited to, the correction of a violation of the" State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et seq.), or the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et seq.) and the administrative regulations promulgated in accordance with these acts.

l. "Life safety improvement loan" means an eligible loan the proceeds of which are to be used to finance, in whole or in part, the construction, acquisition or rendering of life safety improvements at or to boarding houses.

m. "Loan originator" means any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association maintaining an office in the State, or any insurance company or any mortgage banking firm or mortgage banking corporation authorized to transact business in the State, or any agency or instrumentality of the United States or the State or a political subdivision of the State, which is authorized to make eligible loans.

n. "Municipality" means any city of any class or any town, township, village or borough.

o. "Mutual housing" means a housing project operated or to be operated upon completion of construction, improvement or rehabilitation exclusively for the benefit of the families who are entitled to occupancy by reason of ownership of stock in the

housing sponsor, or by reason of co-ownership of premises in a horizontal property regime pursuant to P.L.1963, c.168; but the agency may adopt rules and regulations permitting a reasonable percentage of space in such project to be rented for residential or for commercial use.

p. "Persons and families of low and moderate income" mean persons and families, irrespective of race, creed, national origin or sex, determined by the agency to require assistance on account of personal or family income being not sufficient to afford adequate housing. In making such determination the agency shall take into account the following:

(1) the amount of the total income of such persons and families available for housing needs, (2) the size of the family, (3) the cost and condition of housing facilities available and (4) the eligibility of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing. In the case of projects with respect to which income limits have been established by any agency of the federal government having jurisdiction thereover for the purpose of defining eligibility of low and moderate income families, the agency may determine that the limits so established shall govern. In all other cases income limits for the purpose of defining low or moderate income persons shall be established by the agency in its rules and regulations.

q. "Project cost" means the sum total of all costs incurred in the acquisition, development, construction, improvement or rehabilitation of a housing project, which are approved by the agency as reasonable or necessary, which costs shall include, but are not necessarily limited to, (1) cost of land acquisition and any buildings thereon, (2) cost of site preparation, demolition and development, (3) architect, engineer, legal, agency and other fees paid or payable in connection with the planning, execution and financing of the project, (4) cost of necessary studies, surveys, plans and permits, (5) insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction, (6) cost of construction, reconstruction, fixtures, and equipment related to the real property, (7) cost of land improvements, (8) necessary expenses in connection with initial occupancy of the project, (9) a reasonable profit or fee to the builder and developer, <u>in accordance with the industry standard applicable to similar federal programs,</u> (10) an allowance established by the agency for working capital and contingency reserves, and reserves for any operating deficits, (11) costs of guarantees, insurance or other additional financial security for the project and (12) the cost of such other items, including tenant relocation, as the agency shall determine to be reasonable and necessary for the development of the project, less any and all net rents and other net revenues received from the operation of the

real and personal property on the project site during construction, improvement or rehabilitation.

All costs shall be subject to approval and audit by the agency. The agency may adopt rules and regulations specifying in detail the types and categories of cost which shall be allowable if actually incurred in the development, acquisition, construction, improvement or rehabilitation of a housing project.

r. "Retirement family" means one or more persons related by blood, marriage or adoption who live or expect to live together as a single household in the same dwelling unit, provided that at least one of the persons is an individual who (1) has attained retirement age as defined in section 216a of the Federal Social Security Act, or (2) is under a disability as defined in section 223 of that act, or (3) such individuals as the agency by rule or regulation shall include; and provided further, that the surviving member of a retirement family whose other members died during occupancy of a continuing-care retirement community shall be considered as a retirement family for purposes of permitting continued occupancy of the dwelling unit occupied by such retirement family.

(cf: P.L.2004, c.130, s.124)

2. Section 5 of P.L.1983, c.530 (C.55:14K-5) is amended to read as follows:

5. In order to carry out the purposes and provisions of this act, the agency, in addition to any powers granted to it elsewhere in this act, shall have the following powers:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business; to adopt an official seal and alter the same at pleasure; to maintain an office at such place or places within the State as it may designate; to sue and be sued in its own name;

b. To conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material for its information and necessary to carry out the provisions of this act;

c. To issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before the agency, or before one or more of the members of the agency appointed by it to conduct a hearing;

d. To apply to any court, having territorial jurisdiction of the offense, to have punished for contempt any witness who refuses to obey a subpoena, or who refuses to be sworn or affirmed to testify, or who is guilty of any contempt after summons to appear;

e. To acquire by purchase, gift, foreclosure or condemnation any real or personal property, or any interest therein, to enter into any lease of property and to hold, sell, assign, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or mortgage lien interest owned by it or under its control, custody or in its possession and release or relinquish

any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption, in property foreclosed by it and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law;

f. To acquire, hold, use and dispose of its income revenues, funds and moneys;

g. To adopt rules and regulations expressly authorized by this act and such additional rules and regulations as shall be necessary or desirable to carry out the purposes of this act. The agency shall adopt regulations which provide for consultation with housing sponsors regarding the formulation of agency rules and regulations governing the operation of housing projects and which require the agency to consult with the affected housing sponsor prior to taking any and all specific proposed agency actions relating to the sponsor's housing project. <u>The proposed rules and regulations, and any subsequent proposed amendments, shall be posted on the agency's website at least 45 days prior to the agency adopting the rules and regulations.</u> The agency shall publish all rules and regulations <u>which have been adopted</u> and file them with the Secretary of State;

h. To borrow money or secure credit on a temporary, short-term, interim or long-term basis, and to issue negotiable bonds and to secure the payment thereof and to provide for the rights of the holders thereof;

i. To make and enter into and enforce all contracts and agreements necessary, convenient or desirable to the performance of its duties and the execution of its powers under this act, including contracts or agreements with qualified financial institutions for the servicing and processing of eligible loans owned by the agency;

j. To appoint and employ an executive director, who shall be the chief executive officer of the agency, and additional officers, who need not be members of the agency as the agency deems advisable, and to employ architects, engineers, attorneys, accountants, construction and financial experts and other employees and agents as may be necessary in its judgment and to determine their qualifications, terms of office, duties and compensation; and to promote and discharge such officers, employees and agents, all without regard to the provisions of Title 11 of the Revised Statutes, Civil Service;

k. To contract for and to receive and accept any gifts, grants, loans or contributions from any source, of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of this act subject to the conditions upon which the grants and contributions may be made, including, but not limited to, gifts or grants from any department or agency of the United States or the State for payment of rent supplements to eligible families or for the

payment in whole or in part of the interest expense for a housing project or for any other purpose consistent with this act;

l. To enter into agreements to pay annual sums in lieu of taxes to any political subdivision of the State with respect to any real property owned [or], operated directly by the agency, or financed by the agency;

m. To procure insurance against any loss in connection with its operations, property and other assets (including eligible loans) in the amounts and from the insurers it deems desirable;

n. To the extent permitted under its contract with the holders of bonds of the agency, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other terms of any loan to an institutional lender, eligible loan, loan commitment, contract or agreement of any kind to which the agency is a party;

o. To the extent permitted under its contract with the holders of bonds of the agency, to enter into contracts with any housing sponsor containing provisions enabling the housing sponsor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment from the agency, any department or agency of the United States or the State, these reductions can be made without jeopardizing the economic stability of the housing project;

p. To make and collect the fees and charges it determines are reasonable;

q. To the extent permitted under its contract with the holders of bonds of the agency, to invest and reinvest any moneys of the agency not required for immediate use, including proceeds from the sale of any obligations of the agency, in obligations, securities or other investments as the agency deems prudent. All functions, powers and duties relating to the investment or reinvestment of these funds, including the purchase, sale or exchange of any investments or securities may, upon the request of the agency, be exercised and performed by the Director of the Division of Investment in the Department of the Treasury, in accordance with written directions of the agency signed by an authorized officer, without regard to any other law relating to investments by the Director of the Division of Investment;

r. To provide, contract or arrange for, where, by reason of the financing arrangement, review of the application and proposed construction of a project is required by or in behalf of any department or agency of the United States, consolidated processing of the application or supervision or, in the alternative, to delegate the processing in whole or in part to any such department or agenc;

s. To make eligible loans, and to participate with any department, agency or authority of the United States or of any state thereof, this State, a municipality, or any banking institution, foundation, labor union, insurance company, trustee or fiduciary in

an eligible loan, secured by a single participating mortgage, by separate mortgages or by other security agreements, the interest of each having equal priority as to lien in proportion to the amount of the loan so secured, but which need not be equal as to interest rate, time or rate of amortization or otherwise, and to undertake commitments to make such loans;

t. To assess from time to time the housing needs of any municipality which is experiencing housing shortages as a result of the authorization of casino gaming and to address those needs when planning its programs, as well as considering municipal obligations set by a court or other instrumentality of the State engaged in efforts to increase access to affordable housing within that municipality;

u. To sell any eligible loan made by the agency or any loan to an institutional lender owned by the agency, at public or private sale, with or without bidding, either singly or in groups, or in shares of loans or shares of groups of loans, issue securities, certificates or other evidence of ownership secured by such loans or groups of loans, sell the same to investors, arrange for the marketing of the same; and to deposit and invest the funds derived from such sales in any manner authorized by this act;

v. To make commitments to purchase, and to purchase, service and sell, eligible loans, pools of loans or securities based on loans, insured or issued by any department or agency of the United States, and to make loans directly upon the security of any such loan, pools of loans or securities;

w. To provide such advisory consultation, training and educational services as will assist in the planning, construction, rehabilitation and operation of housing including but not limited to assistance in community development and organization, home management and advisory services for residents and to encourage community organizations and local governments to assist in developing housing;

x. To encourage research in and demonstration projects to develop new and better techniques and methods for increasing the supply, types and financing of housing and housing projects in the State and to engage in these research and demonstration projects and to receive and accept contributions, grants or aid, from any source, public or private, including but not limited to the United States and the State, for carrying out this purpose;

y. To provide to housing sponsors, through eligible loans or otherwise, financing, refinancing or financial assistance for fully completed, as well as partially completed, projects which may or may not be occupied, if the projects meet all the requirements of this act, except that, prior to the making of the mortgage loans by the agency, said projects need not have complied with sections 7a.(9) and 42 of this act;

z. To encourage and stimulate [cooperatives and other forms of housing with tenant] participation through financial incentives for the development of affordable housing projects with New Jersey qualified minority and women-owned companies and certified New Jersey not-for-profit organizations;

aa. To promote innovative programs for home ownership, including but not limited to lease-purchase programs, employer-sponsored housing programs, and tenant cooperatives;

bb. To set aside and designate, out of the funds that are or may become available to it for the purpose of financing housing in this State pursuant to the terms of this act, certain sums or proportions thereof to be used for the financing of housing and home-ownership opportunities, including specifically lease-purchase arrangements, provided by employers to their employees through nonprofit or for profit, limited-dividend corporations or associations created by employers for that purpose; and to establish priority in funding, offer bonus fund allocations, and institute other incentives to encourage such employer-sponsored housing and home-ownership opportunities;

cc. Subject to any agreement with bondholders, to collect, enforce the collection of, and foreclose on any property or collateral securing its eligible loan or loans to institutional lenders and acquire or take possession of such property or collateral and sell the same at public or private sale, with or without bidding, and otherwise deal with such collateral as may be necessary to protect the interests of the agency therein;

dd. To administer and to enter into agreements to administer programs of the federal government or any other entity which are in furtherance of the purposes of this act;

ee. To do and perform any acts and things authorized by this act under, through, or by means of its officers, agents or employees or by contract with any person, firm or corporation; and

ff. To do any acts and things necessary or convenient to carry out the powers expressly granted in this act so long as no duplication of authority or actions impact the efficiency of the programs to produce, manage, or maintain the financial viability of projects.

(cf: P.L.1983, c.530, s.5)

3. (New Section) The agency shall accept third party verification of compliance, eliminate duplicative reviews, and streamline the approval of individuals seeking affordable housing. The agency shall not establish any program, rule, or regulation which unnecessarily obstructs or discourages participation by a "minority business" or a "women's business," as defined pursuant to Section 2 of P.L.1986, c.195 (C.52:27H-21.18). To the extent permitted by law, the agency shall encourage participation by a

"minority business" or a "women's business," as defined pursuant to Section 2 of P.L.1986, c.195 (C.52:27H-21.18) in all programs.

4. Section 4 of P.L.1990, c.90 (C.55:14K-5.1) is amended to read as follows:

4. a. The executive director of the New Jersey Housing and Mortgage Finance Agency shall provide written notice to a county or municipality, as appropriate, when any funding is provided to a local or regional housing authority, or to a redevelopment corporation, agency or authority, or private developer for the purpose of financing a housing development project within the county or municipality. Such notification shall be made within five calendar days of the decision to provide the funding.

b. In the case of a county organized under the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), written notice shall be provided to the county executive or other appropriate executive officer, and to the board of chosen freeholders. In all other counties, written notice shall be provided to the members of the board of chosen freeholders.

In the case of a municipality other than a municipality organized under the council-manager plan pursuant to the "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et seq.), written notice shall be provided to the mayor and to the members of the council. In the case of a municipality organized under the council-manager plan pursuant to the "Optional Municipal Charter Law," P.L.1950, c.210 (C.40:69A-1 et seq.), written notice shall be provided to the manager and to the members of the council.

(cf: P.L.1990, c.90, s.4)

5. Section 1 of P.L.1992, c.186 (C.55:14K-5.2) is amended to read as follows:

1. In addition to the powers otherwise granted in P.L.1983, c.530 (C.55:14K-1 et seq.), the New Jersey Housing and Mortgage Finance Agency shall set aside and designate, out of the funds that are or may become available to it for the purpose of assisting the production of affordable housing in the State, certain amounts to be used for assisting in the development of homeownership opportunities for residents of public housing who seek to acquire ownership of their residential units as part of a resident management corporation, a cooperative corporation or a condominium association formed by the residents of that public housing project through the program established pursuant to Subtitle B of Title IV of Pub.L.101-625 (42 U.S.C. s.12871 et seq.) or any other program administered by the federal government for extending homeownership opportunities to residents of public housing or programs intended to privatize public housing, including the federal Department of Housing and Urban Development's Rental Assistance Demonstration program. Nothing in this act

shall, in any way, relieve a housing authority of the need to submit a plan for replacement housing, as required under 24 CFR 970.11.
(cf: P.L.1992, c.186, s.1)

6. Section 6 of P.L.1983, c.530 (C.55:14K-6) is amended to read as follows:

6. a. The agency, in order to encourage the development, operation, maintenance, construction, improvement and rehabilitation and preservation of safe and adequate housing in the State, is hereby authorized and empowered to finance, by the making of eligible loans or otherwise, the construction, improvement or rehabilitation of housing projects in the State.

b. The agency, in order to carry out the purposes of subsection a. of this section, may:

(1) accept applications for loans;

(2) enter into agreements with housing sponsors for permanent loans and temporary loans or advances in anticipation of permanent loans for the development, operation, maintenance, construction, improvement or rehabilitation of housing projects; and

(3) make permanent loans and temporary loans or advances in anticipation of permanent loans to housing sponsors under the provisions of this act.

c. [No application for a loan for the construction, improvement or rehabilitation of a housing project containing rental units to be rented at below market rates to be located in any municipality shall be processed unless there is already filed with the secretary of the agency a certified copy of a resolution adopted by the municipality reciting that there is a need for such housing project in the municipality.] (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

d. Every application for a loan to a housing sponsor shall be made on forms furnished by the agency and shall contain such information as the agency shall require.

e. In considering any application for a loan for a housing project or allocation of any State of federal subsidy, including the Federal Low Income Housing Tax Credit Program and State Economic Redevelopment and Growth Grant Program, the agency shall give first priority to applications for loans for the preservation, construction, improvement or rehabilitation of housing projects which will be a part of or constructed in connection with an urban redevelopment program, and also shall give consideration to:

(1) the comparative need of the area to be served by the proposed project for housing;

(2) the ability of the applicant to construct, operate, manage and maintain the proposed housing project;

(3) the existence of zoning or other regulations to protect adequately the proposed housing project against detrimental future

uses which could cause undue depreciation in the value of the project;

(4) the availability of adequate parks, recreational areas, utilities, schools, transportation and parking;

(5) the availability of adequate, accessible places of employment; [and]

(6) where applicable, the eligibility of the applicant to make payments to the municipality [in which the housing project is located in lieu of local property taxes] under a payment in lieu of taxation agreement; and

(7) Whether the applicant is a qualified New Jersey based nonprofit or New Jersey based minority and women owned development firm having a valid certification as a "minority business" or a "women's owned business" pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.).

(cf: P.L.1983, c.530, s.6)

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

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

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

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

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

(4) The loan shall be evidenced by a mortgage note or bond and by a mortgage which shall be a first recorded lien on the project and which shall contain such terms and provisions and be in a form approved by the agency. The agency shall require the qualified housing sponsor receiving a loan or its contractor to post security, either by performance bond or other acceptable means, including letters of credit, in amounts related to the project cost as established

by regulation and to execute such other assurances and guarantees as the agency may deem necessary and may require its principals or stockholders to also execute such other assurances and guarantees as the agency may deem necessary;

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

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

(7) No loan shall be executed except a loan made to a corporation or association organized not for profit which has as one of its purposes the development, construction, improvement or rehabilitation of housing projects or for mutual housing unless the housing sponsor agrees (a) to certify upon completion of project construction, improvement or rehabilitation, subject to audit by the agency, either that the actual project cost as defined herein exceeded the amount of the loan proceeds by 10% or more, or the amount by which the loan proceeds exceed 90% of the total project cost, and (b) to pay forthwith to the agency, for application to

reduction of the principal of the loan, the amount, if any, of such excess loan proceeds, subject to audit and determination by the agency. No loan shall be made to a corporation or association organized not for profit or for mutual housing unless the corporation or association organized not for profit or for mutual housing agrees to certify the actual project cost upon completion of the project, subject to audit and determination by the agency, and further agrees to pay forthwith to the agency, for application to reduction of the principal of the loan, the amount, if any, by which the proceeds of the loan exceed the certified project cost subject to audit and determination by the agency. Notwithstanding the provisions of this paragraph, the agency may accept, in lieu of any certification of project cost as provided herein, such other assurances of the project cost in any form or manner whatsoever, as will enable the agency to determine with reasonable accuracy the amount of the project cost;

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

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

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

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

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

(3) To order any managing agent, project manager or owner of a housing project to do such acts as may be necessary to comply with the provisions of all applicable laws or ordinances or any rule or regulation of the agency or the terms of any agreement concerning the project or to refrain from doing any acts in violation thereof and in this regard the agency shall be a proper party to file a complaint and to prosecute thereon for any violations of law or ordinances as set forth herein;

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

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

(6) Subject to the provisions of paragraph (7) of subsection b. of this section, in the event of a violation by the housing sponsor of the terms of any agreement between the agency and the housing sponsor, or between the municipality granting tax exemption and the housing sponsor, or in the event of a violation by the housing sponsor of this act or of the terms of the loan agreement or of any rules and regulations of the agency duly promulgated pursuant to this act, or in the event that the agency shall determine that any loan or advance from the Housing Development Fund pursuant to section 30 of this act is in jeopardy of not being repaid, the agency may, without resort to any judicial process, assume all of the powers and duties of the housing sponsor in the management and operation of the project, including but not limited to the power to receive all revenues and pay all expenses of the project and the power to control all property, including bank accounts and cash, owned by the housing sponsor. The agency may appoint such person or persons whom the agency in its sole discretion deems advisable, including officers or employees of the agency, to perform the functions of the officers or other controlling persons of the housing sponsor. Persons so appointed need not be stockholders or meet other qualifications which may be prescribed by the certificate of incorporation, bylaws or partnership agreement of the housing sponsor. In the absence of fraud or bad faith, persons so appointed shall not be personally liable for debts, obligations or liabilities of

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

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

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

8. Section 8 of P.L.1983, c.350 (C.55:14K-8) is amended to read as follows:

8. a. **[**Admission to housing projects constructed, improved or rehabilitated under this act shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges, including the value or cost to them of heat, light, water, sewerage, parking facilities and cooking fuel, of the dwellings that may be furnished to such families, or seven times those charges if there are three or more dependents. There may be included in the carrying charges to any family for residence in any mutual housing project constructed, improved or rehabilitated with a loan from the agency an amount equal to 6% of the original cash investment of the family in the mutual housing project and, to the extent authorized by the agency where not included in the carrying charges, the value or cost of repainting the apartment and replacing any fixtures or appliances. Notwithstanding the provisions of this section, no family or individual shall be eligible for admission to any housing project constructed, improved or rehabilitated with a loan from the agency, whose gross aggregate family income exceeds such amount as shall

be established from time to time by the agency, by rules or regulations promulgated hereunder; except that with respect to any project financed by an agency loan insured or guaranteed by the United States of America or any agency or instrumentality thereof, the agency may adopt the admission standards for such projects then currently utilized or required by the guarantor or insurer.

The provisions of this subsection shall not apply to any housing project that the agency determines is necessary to promote the long term development and viability of a neighborhood and spur its revitalization or is situated in a qualified municipality that is constructed, improved or rehabilitated on or after the date upon which the commissioner determines that the municipality fulfills the definition of a qualified municipality pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4).**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

b. The agency shall by rules and regulations provide for the periodic examination of the income of any person or family residing in any housing project constructed, improved or rehabilitated with a loan from the agency. If the gross aggregate family income of a family residing in a housing project increases and the ratio to the current rental or carrying charges of the dwelling unit becomes greater than the ratio prescribed for admission **[**in subsection a. of this section**]** but is not more than 25% above the family income so prescribed for admission to the project, the owner or managing agent of the housing project shall permit the family to continue to occupy the unit. The agency or (with the approval of the agency) the housing sponsor of any housing project constructed, improved or rehabilitated with a loan from the agency, may terminate the tenancy or interest of any family residing in the housing project whose gross aggregate family income exceeds by 25% or more the amount prescribed herein and which continues to do so for a period of six months or more; but no tenancy or interest of any such family in any such housing project shall be terminated except upon reasonable notice and opportunity to obtain suitable alternate housing, in accordance with rules and regulations of the agency; and any such family, with the approval of the agency, may be permitted to continue to occupy the unit, subject to payment of a rent or carrying charge surcharge to the housing sponsor in accordance with a schedule of surcharges fixed by the agency. The housing sponsor shall pay the surcharge to the municipality granting tax exemption, but only up to an amount that together with payments made to the municipality in lieu of taxes and for any land taxes equals 25% of the total rents or carrying charges of the housing project for the current and any prior years that the project has been in operation.

The provisions of this subsection shall not apply to any housing project situated in a qualified municipality that is constructed, improved or rehabilitated on or after the date upon which the

commissioner determines that the municipality fulfills the definition of a qualified municipality pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4).

c. For projects on which the agency has made a loan and financed the loan with the proceeds of bonds issued prior to January 1, 1973, any remainder of the surcharge, or the total surcharge if tax exemption has not been granted, shall be paid into the housing finance fund securing the bonds issued to finance the project for the use of the agency; for projects financed on or after January 1, 1973, any remainder of the surcharge, or the total surcharge if tax exemption has not been granted, shall be paid to the agency.

d. Any family residing in a mutual housing project required to remove from the project because of excessive income as herein provided shall be discharged from liability on any note, bond or other evidence of indebtedness relating thereto and shall be reimbursed, in accordance with the rules of the agency, for all sums paid by the family to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy or on account of the acquisition of title for such purpose.

The provisions of this subsection shall not apply to any housing project situated in a qualified municipality that is constructed, improved or rehabilitated on or after the date upon which the commissioner determines that the municipality fulfills the definition of a qualified municipality pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4).

e. The agency shall establish admission rules and regulations for any housing project financed in whole or in part by loans authorized hereunder which shall provide priority categories for persons displaced by urban renewal projects, highway programs or other public works, persons living in substandard housing, persons and families who, by reason of family income, family size or disabilities, have special needs, elderly persons and families living under conditions violative of minimum health and safety standards.

The provisions of this subsection shall not apply to any housing project situated in a qualified municipality that is constructed, improved or rehabilitated on or after the date upon which the commissioner determines that the municipality fulfills the definition of a qualified municipality pursuant to section 4 of P.L.2002, c.43 (C.52:27BBB-4).

f. Notwithstanding the provisions of subsection e. of this section, the Commissioner of Community Affairs, in consultation with the Adjutant General of Military and Veterans' Affairs, shall promulgate admission rules and regulations for any housing project, financed in whole or in part by loans authorized hereunder, to provide a housing preference for veterans and surviving spouses, as those terms are defined under subsection (h) of section 1 of P.L.1963, c.171 (C.54:4-8.10), who qualify for public housing

assistance, and for the spouses of veterans who currently so qualify.
(cf: P.L.2016, c.19, s.1)

9. Section 31 of P.L.1983, c.530 (C.55:14K-31) is amended to read as follows:

31. a. The agency shall establish and maintain a fund called the "General Fund" which shall consist of all moneys of the agency not required to be deposited in any other fund of the agency, which the agency may deposit therein. To the extent available, after paying all the operating costs of the agency, the moneys remaining in the General Fund may be used for the payment of the principal of and interest on the bonds issued by the agency or for such other corporate purposes of the agency as this act authorizes.

b. The agency may establish such additional and further funds as may be necessary and desirable to accomplish any agency purpose or to comply with the provisions of any agreement made by the agency or any resolution approved by the agency. The resolution establishing such a fund shall specify the source of moneys from which it shall be funded and the purposes for which moneys held in the fund shall be disbursed.

c. In the event the agency refinances or discharges any bonds which were used to finance an existing project, and the refinancing or discharge reduces the effective rate on the bond payments, the agency shall provide to projects participating in that financing a proportionate share of savings, including the calculation of administrative costs incurred by the agency in carrying out this section. Commencing on the first day of the eleventh calendar year next following the issuance of a mortgage financed by the agency, project sponsors shall be permitted to repay any mortgage at any time without penalty.

(cf: P.L.1983, c.530, s.31)

10. Section 37 of P.L.1983, c.530 (C.55:14K-37) is amended to read as follows:

37. a. It is the intent of the Legislature that in the event of any conflict or inconsistency in the provisions of this act and any other acts concerning housing sponsors or any rules and regulations adopted thereunder, to the extent of such conflict or inconsistency, the provisions of this act shall be enforced and the provisions of such other acts and rules and regulations adopted thereunder shall be of no effect.

b. The governing body of any municipality in which a housing project financed or to be financed by the agency is or is to be located may by ordinance or resolution, as appropriate, provide that such project shall be exempt from real property taxation, if the housing sponsor enters into an agreement with the municipality for payments to the municipality in lieu of taxes for municipal services. Any such agreement may require the housing sponsor to pay to the

municipality an amount up to [20%] 10% of the annual [gross] net revenue from each housing project situated on such real property for each year of operation thereof following the substantial completion thereof. For the purpose of this section, "annual [gross] net revenue" means the total annual gross rental or carrying charge and other income of a housing sponsor [from] minus utility expenses of and federal subsidy for a housing project. If any such agreement is entered into from the date of recording the mortgage on the project to the date of substantial completion of the project, the annual amount payable to the municipality as taxes or as payments in lieu of taxes in respect of the project site shall not be in excess of the amount of taxes on the project site for the year preceding the recording of the mortgage. Any agreement between any housing sponsor and a municipality pursuant to this subsection shall be submitted to the agency for review in order to avoid duplicating, overlapping or inconsistent regulations or provisions. Any exemption from taxation pursuant to the provisions of this section shall not extend beyond the date on which the eligible loan made by the agency on the project is paid in full.
(cf: P.L.1983, c.530, s.37)

11. This act shall take effect immediately.

STATEMENT

This bill revises certain aspects of the Home Mortgage Finance Agency laws to encourage participation by qualified minority and women owned development firms. The bill directs the agency to establish incentives and priorities to promote participation by minority and women owned businesses, so that a realistic opportunity exists for these firms to successfully participate in providing low and moderate-income housing options to residents of the State. The bill specifically encourages the development of multi-family rental housing and home ownership opportunities for low and moderate income families participating developing firms to satisfy existing bonding requirements through a valid letter of credit and/or traditional performance bonding.

The current financing programs that foster the production of affordable housing require changes to provide for the effective implementation of these programs by the New Jersey Housing and Mortgage Finance Agency. Current law does not provide the necessary authority and flexibility to meet the State’s housing priorities and address the demands for financing to allow for the effective development of affordable housing, especially by minority and women owned businesses.