[First Reprint]

SENATE, No. 3244

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED DECEMBER 10, 2020

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

Co-Sponsored by:
Senator Turner

SYNOPSIS

Establishes “New Jersey Foreclosure Prevention Act.”

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on January 14, 2021, with amendments.

(Sponsorship Updated As Of: 2/17/2021)

AN ACT concerning the mitigation of loss on distressed and foreclosed properties, supplementing and amending Title 55 of the Revised Statutes, and amending Title 2A of the New Jersey Statutes.

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

1. (New section) This act shall be known and may be cited as the "New Jersey Foreclosure Prevention Act."

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

a. New Jersey experienced heightened foreclosure rates during the Great Recession beginning in 2008 and continuing for the ensuing decade, only returning to pre-recession rates of foreclosure in 2019.

b. New Jersey is currently suffering through the COVID-19 pandemic, with more than 1.6 million New Jersey residents seeking unemployment benefits due to job loss, furlough, or hour reductions.

c. Homeowners in New Jersey have suffered enormous negative economic impacts due to the COVID-19 pandemic, resulting in increased housing insecurity. During each month from April 2020 through August 2020, the number of New Jersey households that deferred or did not pay their mortgages exceeded 160,000;

d. Given New Jersey's susceptibility to prolonged periods of elevated rates of foreclosure, as evidenced by the long-term impact of the Great Recession, the Legislature hereby determines and declares that there is a need to provide alternative foreclosure mitigation measures.

3. (New section) As used in P.L. , c. (C.) (pending before the Legislature as this bill):

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

"Community development corporation" means a nonprofit community development corporation established pursuant to Title 15 or 15A of the Revised Statutes of New Jersey, or other law of this State, with a focus on producing and operating affordable housing or housing with on-site social services for individuals with special needs.

"Community development financial institution" means an entity designated and certified by the United States Department of the

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.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate SCU committee amendments adopted January 14, 2021.

Treasury as a Community Development Financial Institution pursuant to 12 CFR Part 1805.

"Contractor" means a qualified community development financial institution that enters into a contract or loan with the agency pursuant to section 5 of P.L.1983, c.530 (C.55:14K-5).

"Eligible property" means any residential property or mortgage note that is owned by an institutional lender as the result of a mortgage foreclosure judgment or a deed in lieu of foreclosure, is by a municipality as the result of a tax foreclosure judgment or is subject to a nonperforming loan from an institutional lender.

"Fund" means the Foreclosure Intervention Fund, established pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

"Program" means the "New Jersey Residential Foreclosure Prevention Program" established pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill).

"Qualified community development financial institution" means a community development financial institution that has a minimum of $50,000,000 in assets and a minimum of two years' experience in the financing and acquisition of real estate for affordable housing.

4. (New section) a. There is established in the agency the "New Jersey Residential Foreclosure Prevention Program," which shall be subject to the powers of the agency, as designated pursuant to section 5 of P.L.1983, c.530 (C.55:14K-5). The goal of the program is to ensure that loss mitigation and foreclosure prevention measures are taken on eligible properties. Either directly, or through its contractors, the agency may purchase eligible properties and mortgage assets in furtherance of this goal, pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

b. The agency in furtherance of the program may enter into contracts with any person, corporation, or entity which the agency determines to be necessary or appropriate to carry out its responsibilities under P.L. , c. (C.) (pending before the Legislature as this bill). Such contracts shall be subject to the

procedures adopted pursuant to section 5 of P.L. , c. (C.) (pending before the Legislature as this bill). All contracts entered into in furtherance of the program shall be governed by the laws of the State and shall provide for indemnification of the agency.

c. In carrying out the agency's duties under P.L. , c. (C.) (pending before the Legislature as this bill), the agency may 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 the judgment of the agency, notwithstanding the provisions of Title 11A of the New Jersey Statutes.

d. Within 180 days following the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), the agency shall adopt a funding plan for the program utilizing the "Foreclosure Intervention Fund" established pursuant to section 6 of P.L. , c. (C.) (pending before the Legislature as this bill). The agency may directly fund the program through revenue generated by the fund. The agency shall have the authority to alter its funding plan as the Executive Director of the agency deems necessary. The funding plan shall include, but not be limited to, program revenue, expected expenditures and projections for the acquisition of foreclosed residential properties or mortgage assets.

5. (New section) a. (1) The agency may 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 agency shall 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. The agency 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.

(2) Should the agency contract with a community development financial institution for the purposes of P.L. , c. (C.) (pending before the Legislature as this bill), the contract shall specify the amounts, schedules, and types of funding to be provided by the agency 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. The agency may condition funding and goals upon the availability of funds to the program. The contract shall specify reasonable administrative costs sufficient to enable the qualified community

development financial institution to exercise its obligations pursuant to P.L. , c. (C.) (pending before the Legislature as this bill). The contract shall set forth criteria for instances when the purchase, sale, lease, and conveyance of properties furthers the purposes of P.L. , c. (C.) (pending before the Legislature as this bill).

b. All purchases, sales, leases, and conveyances of property by qualified community development financial institutions exercised pursuant to this section shall be deemed to lessen the burdens of government in furthering the purposes of P.L. , c. (C.) (pending before the Legislature as this bill).

6. (New section) a. There is established within the agency a Foreclosure Intervention Fund, which shall be a non-lapsing, revolving fund and which shall be the repository for funds appropriated or otherwise made available for the purposes of P.L. , c. (C.) (pending before the Legislature as this bill), and any interest earned thereon. The fund shall be administered by the agency, in accordance with its authority under section 5 of P.L.1983, c.530 (C.55:14K-5) to manage funds for housing programs.

b. The agency may transfer into the fund any amounts held or received by the agency that are needed by the agency or its contractors for the purchase of eligible property.

c. The agency may use annually up to five percent of the monies available in the fund for the payment of any necessary administrative costs related to the administration of the program.

d. Revenue generated through the mechanisms established pursuant to N.J.S.2A:17-38 exceeding the funding plan developed pursuant to subsection d. of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill) may be appropriated by the agency for additional foreclosure prevention programs.

7. (New Section) a. The agency may make grants to eligible applicants, including, but not limited to, non-profit housing sponsors, municipalities or other governmental entities utilizing funds provided by P.L. , c. (C.) (pending before the Legislature as this bill) or otherwise made available to the agency. Grants issued pursuant to this section shall be used to advance the goals of the program, as established pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill).

b. The agency shall 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.

8. (New section) a. The agency is authorized to defend and indemnify the federal government, any department, board, body, agency or other entity thereof, the Government National Mortgage Association and its successors and assigns, the Federal National Mortgage Association and its successors and assigns, and the Federal Home Loan Mortgage Corporation 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. An agreement to defend and indemnify pursuant to this subsection shall not bar, reduce, limit or affect any remedies the agency may have to enforce the agency's agreement or to assert a claim for damages to which the agency may be entitled arising out of the entity's failure to perform the agreement, or for the recovery of funds expended for the defense of an entity if the defense was undertaken in response to a claim or cause of action brought against the entity which arose from gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal conduct of the entity or one or more of its officials or employees. No one other than an entity which is a party to the agreement with the agency may enforce any agreement for defense or indemnification between that entity and the agency.

b. The agency may 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 subsection a. may 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.

9. N.J.S.2A:17-38 is amended to read as follows:

2A:17-38. a. When a sheriff or other officer makes a sale by virtue of an execution or executions to **[**him**]** the sheriff or officer directed, **[**he**]** the sheriff or officer shall, within 30 days thereafter, make and file, with his bill of costs or execution fees, in the office of the clerk of the court out of which the execution or executions issued, a true statement and calculation, in order of time, of the execution or executions by virtue of which the sale was made, the amount or amounts due thereon, respectively, at the time of the sale, the time or times of sale and the amount of the sales.

b. (1) When calculating the amount due thereon, as described in subsection a. of this section, the sheriff or officer shall additionally [1]**[**consider**]** collect[1] $350 per sale to be utilized by the fund within the

New Jersey Housing and Mortgage Finance Agency established in section 6 of P.L. , c. (C.) (pending before the Legislature as this bill).

(2) The revenues obtained from these increased amounts, after deduction of any actual administrative costs incurred by the sheriff or officer in carrying out the provisions of this subsection, shall be transmitted no later than the first day of each quarter by the sheriff or officer to the fund with an accounting of collections and foreclosure actions during the corresponding quarter.

c. The statement shall be certified under the hand of the officer making and filing it, and shall be conclusive against the officer only. If there be more sales than **[**1**]** one, the statement shall be made and filed within 30 days after the final sale.

(cf: N.J.S.2A:17-38)

10. 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 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 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 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) (a) 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

(b) the provisions of section 18 of P.L. 1991, c. 431 (C.40A:20-18) concerning housing projects in financial difficulty shall not apply to housing projects financed 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.

c. Notwithstanding any law, rule or regulation to the contrary, the provisions of paragraphs (5) and (6) of subsection a. of this section shall not be applicable to market rate units.

d. As used in this section, “market rate unit” means a housing unit for which occupancy is not subject to limitations based on tenant income.

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

11. This act shall take effect immediately.