

# 2A:50-73

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2012            **CHAPTER:** 70

**NJSA:** 2A:50-73 (Establishes summary action to foreclose mortgages on vacant and abandoned residential property)

**BILL NO:** S2156 (Substituted for A3248)

**SPONSOR(S)** Lesniak and others

**DATE INTRODUCED:** July 30, 2012

**COMMITTEE:**            **ASSEMBLY:** ---

**SENATE:** Economic Growth

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**            **ASSEMBLY:** October 18, 2012

**SENATE:** October 4, 2012

**DATE OF APPROVAL:** December 3, 2012

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (First Reprint enacted)

**S2156**

**SPONSOR'S STATEMENT:** (Begins on page 5 of introduced bill) Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** No

**SENATE:** Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** Yes

**A3248**

**SPONSOR'S STATEMENT:** (Begins on page 5 of original bill) Yes

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** Yes

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** Yes

(continued)

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

LAW/RWH

P.L.2012, CHAPTER 70, *approved December 3, 2012*

Senate, No. 2156 (*First Reprint*)

1 **AN ACT** establishing a summary action to foreclose mortgages on  
2 vacant and abandoned residential property and supplementing  
3 chapter 50 of Title 2A of the New Jersey Statutes.

4

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

7

8 1. a. For the purposes of this section, "vacant and abandoned"  
9 residential property means residential real estate with respect to  
10 which the mortgagee proves, by clear and convincing evidence, that  
11 the mortgaged real estate is vacant and has been abandoned. Real  
12 property shall be deemed "vacant and abandoned" if the court finds  
13 that the mortgaged property is not occupied by a mortgagor or  
14 tenant as evidenced by a lease agreement entered into prior to the  
15 service of a notice of intention to commence foreclosure according  
16 to section 4 of the "Fair Foreclosure Act," P.L.1995, c.244  
17 (C.2A:50-56), and at least two of the following conditions exist:

18 (1) overgrown or neglected vegetation;

19 (2) the accumulation of newspapers, circulars, flyers or mail on  
20 the property;

21 (3) disconnected gas, electric, or water utility services to the  
22 property;

23 (4) the accumulation of hazardous, noxious, or unhealthy  
24 substances or materials on the property;

25 (5) the accumulation of junk, litter, trash or debris on the  
26 property;

27 (6) the absence of window treatments such as blinds, curtains or  
28 shutters;

29 (7) the absence of furnishings and personal items;

30 (8) statements of neighbors, delivery persons, or government  
31 employees indicating that the residence is vacant and abandoned;

32 (9) windows or entrances to the property that are boarded up or  
33 closed off or multiple window panes that are damaged, broken and  
34 unrepaired;

35 (10) doors to the property that are smashed through, broken off,  
36 unhinged, or continuously unlocked;

37 (11) a risk to the health, safety or welfare of the public, or any  
38 adjoining or adjacent property owners, exists due to acts of

**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:

<sup>1</sup>Senate SEG committee amendments adopted August 20, 2012.

1 vandalism, loitering, criminal conduct, or the physical destruction  
2 or deterioration of the property;

3 (12) an uncorrected violation of a municipal building, housing,  
4 or similar code during the preceding year, or an order by municipal  
5 authorities declaring the property to be unfit for occupancy and to  
6 remain vacant and unoccupied;

7 (13) the mortgagee or other authorized party has secured or  
8 winterized the property due to the property being deemed vacant  
9 and unprotected or in danger of freezing;

10 (14) a written statement issued by any mortgagor expressing the  
11 clear intent of all mortgagors to abandon the property;

12 (15) any other reasonable indicia of abandonment.

13 b. For the purposes of this section, a residential property shall  
14 not be considered "vacant and abandoned" if, on the property:

15 (1) there is an unoccupied building which is undergoing  
16 construction, renovation, or rehabilitation that is proceeding  
17 diligently to completion, and the building is in compliance with all  
18 applicable ordinances, codes, regulations, and statutes;

19 (2) there is a building occupied on a seasonal basis, but  
20 otherwise secure; or

21 (3) there is a building that is secure, but is the subject of a  
22 probate action, action to quiet title, or other ownership dispute.

23 c. In addition to the residential mortgage foreclosure  
24 procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244  
25 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage  
26 debt secured by residential property that is vacant and abandoned  
27 may be brought by a lender in the Superior Court. In addition, a  
28 lender may, at any time after filing a foreclosure action, file with  
29 the court, in accordance with the Rules Governing the Courts of the  
30 State of New Jersey, an application to proceed in a summary  
31 manner because the residential property that is the subject of the  
32 foreclosure action is believed to be "vacant and abandoned";  
33 provided, however, that this section shall not apply to a foreclosure  
34 of a timeshare interest secured by a mortgage.

35 d. (1) In addition to the service of process required by the Rules  
36 of Court, a lender shall establish, for the entry of a residential  
37 foreclosure judgment under this section, that a process server has  
38 made two unsuccessful attempts to serve the mortgagor or occupant  
39 at the residential property, which attempts must be at least 72 hours  
40 apart, and during different times of the day, either before noon,  
41 between noon and 6 P.M., or between 6 P.M. and 10 P.M.

42 (2) In addition to any notices required to be served by law or the  
43 Rules of Court, a lender shall, with any order to show cause served  
44 as original service of process or a motion to proceed summarily,  
45 serve a notice that the lender is seeking, on the return date of the  
46 order to show cause, or on the date fixed by the court, to proceed  
47 summarily for entry of a residential foreclosure judgment because  
48 the property is vacant and abandoned.

1 (3) <sup>1</sup>【Notwithstanding the procedure for serving a notice to cure  
2 required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244  
3 (C.2A:50-58), a lender filing a summary action for entry of a  
4 residential mortgage foreclosure judgment under this section shall  
5 serve the mortgagor with a notice to cure with the order to show  
6 cause served as original service of process. When a lender makes  
7 application to proceed summarily because a property is vacant and  
8 abandoned, a notice to cure shall be served with the order fixing the  
9 date for the matter to proceed summarily】 When a property is  
10 deemed vacant and abandoned as herein defined, a lender shall not  
11 be required to serve the debtor with the notice to cure required by  
12 section 6 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-  
13 58)<sup>1</sup>.

14 e. (1) The court may enter a final residential mortgage  
15 foreclosure judgment under this section upon a finding, <sup>1</sup>【(1)】 (a)<sup>1</sup>  
16 by clear and convincing evidence, that the residential property is  
17 vacant and abandoned as defined under subsection a. of this section,  
18 and <sup>1</sup>【(2)】 (b)<sup>1</sup> that a review of the pleadings and documents filed  
19 with the court, as required by the Rules of Court, supports the entry  
20 of a final residential mortgage foreclosure judgment.

21 (2) A final residential mortgage foreclosure judgment under this  
22 section shall not be entered if the court finds that <sup>1</sup>;

23 (a) the property is not vacant or abandoned <sup>1</sup>【,】<sup>1</sup> or

24 (b) the mortgagor or any other defendant has filed an answer,  
25 appearance, or other written objection that is not withdrawn and the  
26 defenses or objection asserted provide cause to preclude the entry of  
27 a final residential mortgage foreclosure judgment.

28 f. If a final residential mortgage foreclosure judgment under  
29 this section is not entered on the original or adjourned return date of  
30 an order to show cause or the date fixed by the court to proceed  
31 summarily, the court may direct that the foreclosure action continue  
32 on the normal track for residential mortgage foreclosure actions for  
33 properties that are not vacant and abandoned and the notice to cure  
34 served with the order to show cause or the order fixing that date for  
35 the matter to proceed summarily shall be of no effect.

36 g. All actions brought to foreclose on real property pursuant to  
37 this section shall proceed in accordance with the Rules of the Court.

38 h. Nothing in this section is intended to supersede or limit other  
39 procedures adopted by the Court to resolve residential mortgage  
40 foreclosure actions, including, but not limited to, foreclosure  
41 mediation.

42 i. Nothing in this section shall be construed to affect the rights  
43 of a tenant to possession of a leasehold interest under the Anti-  
44 Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New  
45 Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et  
46 seq.), or any other applicable law.

**S2156 [1R]**

1       j. Notwithstanding paragraph (3) of subsection a. of section 12  
2 of P.L.1995 c.244 (C.2A:50-64) to the contrary, if the court makes a  
3 finding in the foreclosure judgment that the property is vacant and  
4 abandoned, the sheriff shall sell the property within '~~75~~ 60' days  
5 of the sheriff's receipt of any writ of execution issued by the court.  
6 If it becomes apparent that the sheriff cannot comply with the  
7 provisions of this subsection, the foreclosing plaintiff may apply to  
8 the court for an order appointing a Special Master or judicial agent  
9 to hold the foreclosure sale.

10

11       2. This act shall take effect immediately but shall remain  
12 inoperative until the first day of the fourth month next following the  
13 date of enactment.

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18       Establishes summary action to foreclose mortgages on vacant  
19 and abandoned residential property.

# SENATE, No. 2156

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JULY 30, 2012

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**SYNOPSIS**

Establishes summary action to foreclose mortgages on vacant and abandoned residential property.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT establishing a summary action to foreclose mortgages on  
2 vacant and abandoned residential property and supplementing  
3 chapter 50 of Title 2A of the New Jersey Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. a. For the purposes of this section, "vacant and abandoned"  
9 residential property means residential real estate with respect to  
10 which the mortgagee proves, by clear and convincing evidence, that  
11 the mortgaged real estate is vacant and has been abandoned. Real  
12 property shall be deemed "vacant and abandoned" if the court finds  
13 that the mortgaged property is not occupied by a mortgagor or  
14 tenant as evidenced by a lease agreement entered into prior to the  
15 service of a notice of intention to commence foreclosure according  
16 to section 4 of the "Fair Foreclosure Act," P.L.1995, c.244  
17 (C.2A:50-56), and at least two of the following conditions exist:

- 18 (1) overgrown or neglected vegetation;  
19 (2) the accumulation of newspapers, circulars, flyers or mail on  
20 the property;  
21 (3) disconnected gas, electric, or water utility services to the  
22 property;  
23 (4) the accumulation of hazardous, noxious, or unhealthy  
24 substances or materials on the property;  
25 (5) the accumulation of junk, litter, trash or debris on the  
26 property;  
27 (6) the absence of window treatments such as blinds, curtains or  
28 shutters;  
29 (7) the absence of furnishings and personal items;  
30 (8) statements of neighbors, delivery persons, or government  
31 employees indicating that the residence is vacant and abandoned;  
32 (9) windows or entrances to the property that are boarded up or  
33 closed off or multiple window panes that are damaged, broken and  
34 unrepaired;  
35 (10) doors to the property that are smashed through, broken off,  
36 unhinged, or continuously unlocked;  
37 (11) a risk to the health, safety or welfare of the public, or any  
38 adjoining or adjacent property owners, exists due to acts of  
39 vandalism, loitering, criminal conduct, or the physical destruction  
40 or deterioration of the property;  
41 (12) an uncorrected violation of a municipal building, housing,  
42 or similar code during the preceding year, or an order by municipal  
43 authorities declaring the property to be unfit for occupancy and to  
44 remain vacant and unoccupied;  
45 (13) the mortgagee or other authorized party has secured or  
46 winterized the property due to the property being deemed vacant  
47 and unprotected or in danger of freezing;



1 (14) a written statement issued by any mortgagor expressing the  
2 clear intent of all mortgagors to abandon the property;  
3 (15) any other reasonable indicia of abandonment.  
4 b. For the purposes of this section, a residential property shall  
5 not be considered "vacant and abandoned" if, on the property:  
6 (1) there is an unoccupied building which is undergoing  
7 construction, renovation, or rehabilitation that is proceeding  
8 diligently to completion, and the building is in compliance with all  
9 applicable ordinances, codes, regulations, and statutes;  
10 (2) there is a building occupied on a seasonal basis, but  
11 otherwise secure; or  
12 (3) there is a building that is secure, but is the subject of a  
13 probate action, action to quiet title, or other ownership dispute.  
14 c. In addition to the residential mortgage foreclosure  
15 procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244  
16 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage  
17 debt secured by residential property that is vacant and abandoned  
18 may be brought by a lender in the Superior Court. In addition, a  
19 lender may, at any time after filing a foreclosure action, file with  
20 the court, in accordance with the Rules Governing the Courts of the  
21 State of New Jersey, an application to proceed in a summary  
22 manner because the residential property that is the subject of the  
23 foreclosure action is believed to be "vacant and abandoned";  
24 provided, however, that this section shall not apply to a foreclosure  
25 of a timeshare interest secured by a mortgage.  
26 d. (1) In addition to the service of process required by the Rules  
27 of Court, a lender shall establish, for the entry of a residential  
28 foreclosure judgment under this section, that a process server has  
29 made two unsuccessful attempts to serve the mortgagor or occupant  
30 at the residential property, which attempts must be at least 72 hours  
31 apart, and during different times of the day, either before noon,  
32 between noon and 6 P.M., or between 6 P.M. and 10 P.M.  
33 (2) In addition to any notices required to be served by law or the  
34 Rules of Court, a lender shall, with any order to show cause served  
35 as original service of process or a motion to proceed summarily,  
36 serve a notice that the lender is seeking, on the return date of the  
37 order to show cause, or on the date fixed by the court, to proceed  
38 summarily for entry of a residential foreclosure judgment because  
39 the property is vacant and abandoned.  
40 (3) Notwithstanding the procedure for serving a notice to cure  
41 required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244  
42 (C.2A:50-58), a lender filing a summary action for entry of a  
43 residential mortgage foreclosure judgment under this section shall  
44 serve the mortgagor with a notice to cure with the order to show  
45 cause served as original service of process. When a lender makes  
46 application to proceed summarily because a property is vacant and  
47 abandoned, a notice to cure shall be served with the order fixing the  
48 date for the matter to proceed summarily.

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1 e. (1) The court may enter a final residential mortgage  
2 foreclosure judgment under this section upon a finding, (1) by clear  
3 and convincing evidence, that the residential property is vacant and  
4 abandoned as defined under subsection a. of this section, and (2)  
5 that a review of the pleadings and documents filed with the court, as  
6 required by the Rules of Court, supports the entry of a final  
7 residential mortgage foreclosure judgment.

8 (2) A final residential mortgage foreclosure judgment under this  
9 section shall not be entered if the court finds that

10 (a) the property is not vacant or abandoned, or

11 (b) the mortgagor or any other defendant has filed an answer,  
12 appearance, or other written objection that is not withdrawn and the  
13 defenses or objection asserted provide cause to preclude the entry of  
14 a final residential mortgage foreclosure judgment.

15 f. If a final residential mortgage foreclosure judgment under  
16 this section is not entered on the original or adjourned return date of  
17 an order to show cause or the date fixed by the court to proceed  
18 summarily, the court may direct that the foreclosure action continue  
19 on the normal track for residential mortgage foreclosure actions for  
20 properties that are not vacant and abandoned and the notice to cure  
21 served with the order to show cause or the order fixing that date for  
22 the matter to proceed summarily shall be of no effect.

23 g. All actions brought to foreclose on real property pursuant to  
24 this section shall proceed in accordance with the Rules of the Court.

25 h. Nothing in this section is intended to supersede or limit other  
26 procedures adopted by the Court to resolve residential mortgage  
27 foreclosure actions, including, but not limited to, foreclosure  
28 mediation.

29 i. Nothing in this section shall be construed to affect the rights  
30 of a tenant to possession of a leasehold interest under the Anti-  
31 Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New  
32 Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et  
33 seq.), or any other applicable law.

34 j. Notwithstanding paragraph (3) of subsection a. of section 12  
35 of P.L.1995 c.244 (C.2A:50-64) to the contrary, if the court makes a  
36 finding in the foreclosure judgment that the property is vacant and  
37 abandoned, the sheriff shall sell the property within 75 days of the  
38 sheriff's receipt of any writ of execution issued by the court. If it  
39 becomes apparent that the sheriff cannot comply with the provisions  
40 of this subsection, the foreclosing plaintiff may apply to the court  
41 for an order appointing a Special Master or judicial agent to hold  
42 the foreclosure sale.

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44 2. This act shall take effect immediately but shall remain  
45 inoperative until the first day of the fourth month next following the  
46 date of enactment.

## STATEMENT

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The bill would authorize lenders to bring summary actions to foreclose mortgages on vacant and abandoned residential property. In order to secure entry of a foreclosure judgment, the lender would have to follow procedures in addition to those set out in the "Fair Foreclosure Act" and the Rules of Court. The court may enter a final residential mortgage foreclosure judgment under the bill if it finds, by clear and convincing evidence, that the residential property is vacant and abandoned and that a review of the pleadings and documents filed with the court supports the entry of a final judgment. The court may not enter a final residential mortgage foreclosure judgment if the court finds that the property is not vacant or abandoned, or the mortgagor or any other defendant has filed an answer, appearance or other written objection asserting defenses or objections that provide cause to preclude the entry of judgment.

Real property would be deemed "vacant and abandoned" if the court finds that:

- the mortgaged property is not occupied by a mortgagor or by a tenant who entered into a lease agreement before the mortgagee served notice of intention to commence foreclosure under section 4 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-56), and
- there exists at least two of 15 conditions enumerated in the bill which indicate vacancy and abandonment.

Real property would not be considered "vacant and abandoned" under the following circumstances:

- there is an unoccupied building on the property which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;
- there is a building occupied on a seasonal basis, but otherwise secure; or
- there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

The bill states that this new summary action is not intended to supersede or limit other procedures adopted by the Court to resolve residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation. The bill provides that it should not be construed to affect the rights of a tenant to possession of a leasehold interest under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or any other applicable law.

If the court makes a finding in the foreclosure judgment that the property is vacant and abandoned, the sheriff shall sell the property within 75 days of the sheriff's receipt of any writ of execution

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1 issued by the court. If it becomes apparent that the sheriff cannot  
2 comply with this timeframe, the foreclosing plaintiff may apply to  
3 the court for an order appointing a Special Master or judicial agent  
4 to hold the foreclosure sale.

# SENATE ECONOMIC GROWTH COMMITTEE

## STATEMENT TO

### **SENATE, No. 2156**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: AUGUST 9, 2012

The Senate Economic Growth Committee reports favorably Senate Bill, No. 2156 with committee amendments.

The bill, as amended, would authorize lenders to bring summary actions to foreclose mortgages on vacant and abandoned residential property. In order to secure entry of a foreclosure judgment, the lender would have to follow procedures in addition to those set out in the "Fair Foreclosure Act" and the Rules of Court. The court may enter a final residential mortgage foreclosure judgment under the bill if it finds, by clear and convincing evidence, that the residential property is "vacant and abandoned," as that term is defined in the bill, and that a review of the pleadings and documents filed with the court supports the entry of a final judgment. The court may not enter a final residential mortgage foreclosure judgment if the court finds that the property is not vacant or abandoned, or the mortgagor or any other defendant has filed an answer, appearance or other written objection asserting defenses or objections that provide cause to preclude the entry of judgment.

Under the amended bill, real property would be deemed "vacant and abandoned" if the court finds that:

- the mortgaged property is not occupied by a mortgagor or by a tenant who entered into a lease agreement before the mortgagee served notice of intention to commence foreclosure under section 4 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-56), and
- there exists at least two of 15 conditions enumerated in the bill which indicate vacancy and abandonment.

Real property would not be considered "vacant and abandoned" under the following circumstances:

- there is an unoccupied building on the property which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;
- there is a building occupied on a seasonal basis, but otherwise secure; or

- there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

The amended bill states that this new summary action is not intended to supersede or limit other procedures adopted by the Court to resolve residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation. The bill provides that when a property is deemed vacant and abandoned, the lender would not be required to serve the debtor with the notice to cure required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-58). The bill provides that the bill should be construed to affect the rights of a tenant to possession of a leasehold interest under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or any other applicable law.

If the court makes a finding in the foreclosure judgment that the property is vacant and abandoned, the amended bill requires the sheriff to sell the property within 60 days of the sheriff's receipt of any writ of execution issued by the court. If it becomes apparent that the sheriff cannot comply with this timeframe, the foreclosing plaintiff may apply to the court for an order appointing a Special Master or judicial agent to hold the foreclosure sale.

#### COMMITTEE AMENDMENTS

The committee amendments: 1) provide that a lender would not be required to serve the debtor with the notice to cure required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-58) when a property is deemed vacant and abandoned; and 2) change from 75 to 60 the number of days within which the sheriff would be required to sell the property once the sheriff receives a receipt of any writ of execution issued by the court that the property is vacant and abandoned.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 2156 STATE OF NEW JERSEY 215th LEGISLATURE

DATED: OCTOBER 10, 2012

### SUMMARY

**Synopsis:** Establishes summary action to foreclose mortgages on vacant and abandoned residential property.

**Type of Impact:** Indeterminate increase in State revenues.

**Agencies Affected:** The Judiciary

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	Indeterminate Increase – See comments below		

- The Office of Legislative Services (OLS) has determined that the enactment of Senate Bill No. 2156 (1R) would result in an indeterminate increase in State revenues associated with the filing of court applications for summary actions to foreclose on vacant and abandoned property.
- It is not possible for the OLS to calculate the number of summary actions that would be filed with the court or properties for which a final residential mortgage foreclosure judgment would be entered. According to the Administrative Office of the Courts (AOC), 269,292 foreclosure complaints were filed in the Superior Court of New Jersey from 2005 through 2011, but there is no breakdown for properties that would be deemed “vacant and abandoned under the bill.
- Information obtained from the AOC website indicates the following fee amounts: for filing a foreclosure complaint: \$200; for filing an answer to a foreclosure complaint: \$135; and for motions: \$35.

## **BILL DESCRIPTION**

Senate Bill No. 2156 (1R) of 2012 would authorize lenders to bring summary actions to foreclose mortgages on vacant and abandoned residential property. In order to secure entry of a foreclosure judgment, the lender would have to follow procedures in addition to those set out in the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53) and the Rules of Court. The court may enter a final residential mortgage foreclosure judgment under the bill if it finds, by clear and convincing evidence, that the residential property is “vacant and abandoned,” as that term is defined in the bill, and that a review of the pleadings and documents filed with the court supports the entry of a final judgment. The court may not enter a final residential mortgage foreclosure judgment if the court finds that the property is not vacant and abandoned, or the mortgagor or any other defendant has filed an answer, appearance, or other written objection asserting defenses or objections that provide cause to preclude the entry of judgment.

The bill provides that real property would be deemed “vacant and abandoned” if the court finds that: 1) the mortgaged property is not occupied by a mortgagor or by a tenant who entered into a lease agreement before the mortgagee served notice of intention to commence foreclosure under section four of the “Fair Foreclosure Act,” and two) there exists at least two of 15 conditions enumerated in the bill which indicate vacancy and abandonment. Real property would not be considered “vacant and abandoned” under the following circumstances: 1) there is an unoccupied building on the property which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes; 2) there is a building occupied on a seasonal basis, but otherwise secure; or 3) there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

The bill states that this new summary action is not intended to supersede or limit other procedures adopted by the New Jersey Supreme Court to resolve residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation. The bill provides that when a property is deemed vacant and abandoned, the lender would not be required to serve the debtor with the notice to cure required by section six of the “Fair Foreclosure Act.” The bill provides that it should be construed to affect the rights of a tenant to possession of a leasehold interest under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the “New Jersey Foreclosure Fairness Act,” P.L.2009, c.296 (C.2A:50-69 et seq.), or any other applicable law. If the court makes a finding in the foreclosure judgment that the property is vacant and abandoned, the bill requires the sheriff to sell the property within 60 days of the sheriff’s receipt of any writ of execution issued by the court. If it becomes apparent that the sheriff cannot comply with this timeframe, the foreclosing plaintiff may apply to the court for an order appointing a Special Master or judicial agent to hold the foreclosure sale.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS has determined that the enactment of Senate Bill No. 2156 (1R) would result in an indeterminate increase in State revenues associated with the filing of court motions for summary



actions to foreclose on vacant and abandoned property. It is not possible for the OLS to calculate the number of applications to proceed in a summary manner that would be filed with the court. According to the AOC, 269,292 foreclosure complaints were filed in the Superior Court of New Jersey from 2005 through 2011. An article published by *The Star-Ledger* on September 19, 2012 (“Foreclosure Reviews Stall Housing Revival”) noted that about 60,000 foreclosures started since January 2008 await resolution. Information obtained from the AOC website indicates the following fee amounts: for filing a foreclosure complaint: \$200; for filing an answer to a foreclosure complaint: \$135; and for motions: \$35. An application to court, following the filing of a normal foreclosure complaint, to proceed in a summary manner would result in an additional \$35 motion fee.

*Section: Local Government*

*Analyst: Scott A. Brodsky  
Senior Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

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

# ASSEMBLY, No. 3248

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED SEPTEMBER 24, 2012

**Sponsored by:**

**Assemblyman JERRY GREEN**

**District 22 (Middlesex, Somerset and Union)**

**Assemblyman TROY SINGLETON**

**District 7 (Burlington)**

**SYNOPSIS**

Establishes summary action to foreclose mortgages on vacant and abandoned residential property.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/25/2012)**

1 AN ACT establishing a summary action to foreclose mortgages on  
2 vacant and abandoned residential property and supplementing  
3 chapter 50 of Title 2A of the New Jersey Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. a. For the purposes of this section, "vacant and abandoned"  
9 residential property means residential real estate with respect to  
10 which the mortgagee proves, by clear and convincing evidence, that  
11 the mortgaged real estate is vacant and has been abandoned. Real  
12 property shall be deemed "vacant and abandoned" if the court finds  
13 that the mortgaged property is not occupied by a mortgagor or  
14 tenant as evidenced by a lease agreement entered into prior to the  
15 service of a notice of intention to commence foreclosure according  
16 to section 4 of the "Fair Foreclosure Act," P.L.1995, c.244  
17 (C.2A:50-56), and at least two of the following conditions exist:

- 18 (1) overgrown or neglected vegetation;  
19 (2) the accumulation of newspapers, circulars, flyers or mail on  
20 the property;  
21 (3) disconnected gas, electric, or water utility services to the  
22 property;  
23 (4) the accumulation of hazardous, noxious, or unhealthy  
24 substances or materials on the property;  
25 (5) the accumulation of junk, litter, trash or debris on the  
26 property;  
27 (6) the absence of window treatments such as blinds, curtains or  
28 shutters;  
29 (7) the absence of furnishings and personal items;  
30 (8) statements of neighbors, delivery persons, or government  
31 employees indicating that the residence is vacant and abandoned;  
32 (9) windows or entrances to the property that are boarded up or  
33 closed off or multiple window panes that are damaged, broken and  
34 unrepaired;  
35 (10) doors to the property that are smashed through, broken off,  
36 unhinged, or continuously unlocked;  
37 (11) a risk to the health, safety or welfare of the public, or any  
38 adjoining or adjacent property owners, exists due to acts of  
39 vandalism, loitering, criminal conduct, or the physical destruction  
40 or deterioration of the property;  
41 (12) an uncorrected violation of a municipal building, housing,  
42 or similar code during the preceding year, or an order by municipal  
43 authorities declaring the property to be unfit for occupancy and to  
44 remain vacant and unoccupied;  
45 (13) the mortgagee or other authorized party has secured or  
46 winterized the property due to the property being deemed vacant  
47 and unprotected or in danger of freezing;

1 (14) a written statement issued by any mortgagor expressing the  
2 clear intent of all mortgagors to abandon the property;  
3 (15) any other reasonable indicia of abandonment.  
4 b. For the purposes of this section, a residential property shall  
5 not be considered "vacant and abandoned" if, on the property:  
6 (1) there is an unoccupied building which is undergoing  
7 construction, renovation, or rehabilitation that is proceeding  
8 diligently to completion, and the building is in compliance with all  
9 applicable ordinances, codes, regulations, and statutes;  
10 (2) there is a building occupied on a seasonal basis, but  
11 otherwise secure; or  
12 (3) there is a building that is secure, but is the subject of a  
13 probate action, action to quiet title, or other ownership dispute.  
14 c. In addition to the residential mortgage foreclosure procedures  
15 set out in the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53  
16 et seq.), a summary action to foreclose a mortgage debt secured by  
17 residential property that is vacant and abandoned may be brought by  
18 a lender in the Superior Court. In addition, a lender may, at any  
19 time after filing a foreclosure action, file with the court, in  
20 accordance with the Rules Governing the Courts of the State of  
21 New Jersey, an application to proceed in a summary manner  
22 because the residential property that is the subject of the foreclosure  
23 action is believed to be "vacant and abandoned"; provided,  
24 however, that this section shall not apply to a foreclosure of a  
25 timeshare interest secured by a mortgage.  
26 d. (1) In addition to the service of process required by the Rules  
27 of Court, a lender shall establish, for the entry of a residential  
28 foreclosure judgment under this section, that a process server has  
29 made two unsuccessful attempts to serve the mortgagor or occupant  
30 at the residential property, which attempts must be at least 72 hours  
31 apart, and during different times of the day, either before noon,  
32 between noon and 6 P.M., or between 6 P.M. and 10 P.M.  
33 (2) In addition to any notices required to be served by law or the  
34 Rules of Court, a lender shall, with any order to show cause served  
35 as original service of process or a motion to proceed summarily,  
36 serve a notice that the lender is seeking, on the return date of the  
37 order to show cause, or on the date fixed by the court, to proceed  
38 summarily for entry of a residential foreclosure judgment because  
39 the property is vacant and abandoned.  
40 (3) Notwithstanding the procedure for serving a notice to cure  
41 required by section 6 of the "Fair Foreclosure Act," P.L.1995, c.244  
42 (C.2A:50-58), a lender filing a summary action for entry of a  
43 residential mortgage foreclosure judgment under this section shall  
44 serve the mortgagor with a notice to cure with the order to show  
45 cause served as original service of process. When a lender makes  
46 application to proceed summarily because a property is vacant and  
47 abandoned, a notice to cure shall be served with the order fixing the  
48 date for the matter to proceed summarily.

1 e. (1) The court may enter a final residential mortgage  
2 foreclosure judgment under this section upon a finding, (1) by clear  
3 and convincing evidence, that the residential property is vacant and  
4 abandoned as defined under subsection a. of this section, and (2)  
5 that a review of the pleadings and documents filed with the court, as  
6 required by the Rules of Court, supports the entry of a final  
7 residential mortgage foreclosure judgment.

8 (2) A final residential mortgage foreclosure judgment under this  
9 section shall not be entered if the court finds that

10 (a) the property is not vacant or abandoned, or

11 (b) the mortgagor or any other defendant has filed an answer,  
12 appearance, or other written objection that is not withdrawn and the  
13 defenses or objection asserted provide cause to preclude the entry of  
14 a final residential mortgage foreclosure judgment.

15 f. If a final residential mortgage foreclosure judgment under this  
16 section is not entered on the original or adjourned return date of an  
17 order to show cause or the date fixed by the court to proceed  
18 summarily, the court may direct that the foreclosure action continue  
19 on the normal track for residential mortgage foreclosure actions for  
20 properties that are not vacant and abandoned and the notice to cure  
21 served with the order to show cause or the order fixing that date for  
22 the matter to proceed summarily shall be of no effect.

23 g. All actions brought to foreclose on real property pursuant to  
24 this section shall proceed in accordance with the Rules of the Court.

25 h. Nothing in this section is intended to supersede or limit other  
26 procedures adopted by the Court to resolve residential mortgage  
27 foreclosure actions, including, but not limited to, foreclosure  
28 mediation.

29 i. Nothing in this section shall be construed to affect the rights  
30 of a tenant to possession of a leasehold interest under the Anti-  
31 Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New  
32 Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et  
33 seq.), or any other applicable law.

34 j. Notwithstanding paragraph (3) of subsection a. of section 12  
35 of P.L.1995 c.244 (C.2A:50-64) to the contrary, if the court makes a  
36 finding in the foreclosure judgment that the property is vacant and  
37 abandoned, the sheriff shall sell the property within 75 days of the  
38 sheriff's receipt of any writ of execution issued by the court. If it  
39 becomes apparent that the sheriff cannot comply with the provisions  
40 of this subsection, the foreclosing plaintiff may apply to the court  
41 for an order appointing a Special Master or judicial agent to hold  
42 the foreclosure sale.

43  
44 2. This act shall take effect immediately but shall remain  
45 inoperative until the first day of the fourth month next following the  
46 date of enactment.

## STATEMENT

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The bill would authorize lenders to bring summary actions to foreclose mortgages on vacant and abandoned residential property. In order to secure entry of a foreclosure judgment, the lender would have to follow procedures in addition to those set out in the "Fair Foreclosure Act" and the Rules of Court. The court may enter a final residential mortgage foreclosure judgment under the bill if it finds, by clear and convincing evidence, that the residential property is vacant and abandoned and that a review of the pleadings and documents filed with the court supports the entry of a final judgment. The court may not enter a final residential mortgage foreclosure judgment if the court finds that the property is not vacant or abandoned, or the mortgagor or any other defendant has filed an answer, appearance or other written objection asserting defenses or objections that provide cause to preclude the entry of judgment.

Real property would be deemed "vacant and abandoned" if the court finds that:

- the mortgaged property is not occupied by a mortgagor or by a tenant who entered into a lease agreement before the mortgagee served notice of intention to commence foreclosure under section 4 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-56), and
- there exists at least two of 15 conditions enumerated in the bill which indicate vacancy and abandonment.

Real property would not be considered "vacant and abandoned" under the following circumstances:

- there is an unoccupied building on the property which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;
- there is a building occupied on a seasonal basis, but otherwise secure; or
- there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

The bill states that this new summary action is not intended to supersede or limit other procedures adopted by the Court to resolve residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation. The bill provides that it should not be construed to affect the rights of a tenant to possession of a leasehold interest under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or any other applicable law.

If the court makes a finding in the foreclosure judgment that the property is vacant and abandoned, the sheriff shall sell the property within 75 days of the sheriff's receipt of any writ of execution

1 issued by the court. If it becomes apparent that the sheriff cannot  
2 comply with this timeframe, the foreclosing plaintiff may apply to  
3 the court for an order appointing a Special Master or judicial agent  
4 to hold the foreclosure sale.

ASSEMBLY HOUSING AND LOCAL GOVERNMENT  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3248**

with committee amendments

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 24, 2012

The Assembly Housing and Local Government Committee reports favorably and with committee amendments Assembly Bill No. 3248.

The bill, as amended, would authorize lenders to bring summary actions to foreclose mortgages on vacant and abandoned residential property. In order to secure entry of a foreclosure judgment, the lender would have to follow procedures in addition to those set out in the "Fair Foreclosure Act" and the Rules of Court. The court may enter a final residential mortgage foreclosure judgment under the bill if it finds, by clear and convincing evidence, that the residential property is vacant and abandoned and that a review of the pleadings and documents filed with the court supports the entry of a final judgment. The court may not enter a final residential mortgage foreclosure judgment if the court finds that the property is not vacant or abandoned, or the mortgagor or any other defendant has filed an answer, appearance, or other written objection asserting defenses or objections that provide cause to preclude the entry of judgment.

Under the amended bill, real property would be deemed "vacant and abandoned" if the court finds that:

- the mortgaged property is not occupied by a mortgagor or by a tenant who entered into a lease agreement before the mortgagee served notice of intention to commence foreclosure under section 4 of the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-56), and
- there exists at least two of 15 conditions enumerated in the bill which indicate vacancy and abandonment.

Real property would not be considered "vacant and abandoned" under the following circumstances:

- there is an unoccupied building on the property which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;
- there is a building occupied on a seasonal basis, but otherwise secure; or



- there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

The amended bill states that this new summary action is not intended to supersede or limit other procedures adopted by the Court to resolve residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation. The bill provides that when a property is deemed vacant and abandoned, the lender would not be required to serve the debtor with the notice to cure required by section 6 of the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-58). The bill provides that it should be construed to affect the rights of a tenant to possession of a leasehold interest under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the “New Jersey Foreclosure Fairness Act,” P.L.2009, c.296 (C.2A:50-69 et seq.), or any other applicable law.

If the court makes a finding in the foreclosure judgment that the property is vacant and abandoned, the sheriff shall sell the property within 60 days of the sheriff’s receipt of any writ of execution issued by the court. If it becomes apparent that the sheriff cannot comply with this timeframe, the foreclosing plaintiff may apply to the court for an order appointing a Special Master or judicial agent to hold the foreclosure sale.

#### COMMITTEE AMENDMENTS

The committee amended the bill to:

- provide that a lender would not be required to serve the debtor with the notice to cure required by section 6 of the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-58) when a property is deemed vacant and abandoned; and
- change from 75 to 60 the number of days within which the sheriff would be required to sell a property once the sheriff receives a writ of execution issued by the court that determined that the property is vacant and abandoned.

These Assembly amendments make this bill identical to S2156 (1R).

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 3248

### STATE OF NEW JERSEY 215th LEGISLATURE

DATED: OCTOBER 23, 2012

#### SUMMARY

**Synopsis:** Establishes summary action to foreclose mortgages on vacant and abandoned residential real property.

**Type of Impact:** Indeterminate increase in State revenues.

**Agencies Affected:** The Judiciary

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	Indeterminate Increase – See comments below		

- The Office of Legislative Services (OLS) has determined that the enactment of Assembly Bill No. 3248 (1R) would result in an indeterminate increase in State revenues associated with the filing of court applications for summary actions to foreclose on vacant and abandoned property.
- It is not possible for the OLS to calculate the number summary actions that would be filed with the court or properties for which a final residential mortgage foreclosure judgment would be entered. According to the Administrative Office of the Courts (AOC), 269,292 foreclosure complaints were filed in the Superior Court of New Jersey from 2005 through 2011, but there is no breakdown for properties that would be deemed “vacant and abandoned” under the bill.
- Information obtained from the AOC website indicates the following fee amounts: for filing a foreclosure complaint: \$200; for filing an answer to a foreclosure complaint: \$135; and for motions: \$35.

## **BILL DESCRIPTION**

Assembly Bill No. 3248 (1R) of 2012 would authorize lenders to bring summary actions to foreclose mortgages on vacant and abandoned residential property. In order to secure entry of a foreclosure judgment, the lender would have to follow procedures in addition to those set out in the “Fair Foreclosure Act,” P.L.1995, c.244 (C.2A:50-53) and the Rules of Court. The court may enter a final residential mortgage foreclosure judgment under the bill if it finds, by clear and convincing evidence, that the residential property is “vacant and abandoned,” as that term is defined in the bill, and that a review of the pleadings and documents filed with the court supports the entry of a final judgment. The court may not enter a final residential mortgage foreclosure judgment if the court finds that the property is not vacant and abandoned, or the mortgagor or any other defendant has filed an answer, appearance, or other written objection asserting defenses or objections that provide cause to preclude the entry of judgment.

The bill provides that real property would be deemed “vacant and abandoned” if the court finds that: 1) the mortgaged property is not occupied by a mortgagor or by a tenant who entered into a lease agreement before the mortgagee served notice of intention to commence foreclosure under section 4 of the “Fair Foreclosure Act,” and 2) there exists at least two of 15 conditions enumerated in the bill which indicate vacancy and abandonment. Real property would not be considered “vacant and abandoned” under the following circumstances: 1) there is an unoccupied building on the property which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes; 2) there is a building occupied on a seasonal basis, but otherwise secure; or 3) there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

The bill states that this new summary action is not intended to supersede or limit other procedures adopted by the New Jersey Supreme Court to resolve residential mortgage foreclosure actions, including, but not limited to, foreclosure mediation. The bill provides that when a property is deemed vacant and abandoned, the lender would not be required to serve the debtor with the notice to cure required by section 6 of the “Fair Foreclosure Act.” The bill provides that the it should be construed to affect the rights of a tenant to possession of a leasehold interest under the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the “New Jersey Foreclosure Fairness Act,” P.L.2009, c.296 (C.2A:50-69 et seq.), or any other applicable law. If the court makes a finding in the foreclosure judgment that the property is vacant and abandoned, the bill requires the sheriff to sell the property within 60 days of the sheriff’s receipt of any writ of execution issued by the court. If it becomes apparent that the sheriff cannot comply with this timeframe, the foreclosing plaintiff may apply to the court for an order appointing a Special Master or judicial agent to hold the foreclosure sale.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS has determined that the enactment of Assembly Bill No. 3248 (1R) would result in an indeterminate increase in State revenues associated with the filing of court motions for

summary actions to foreclose on vacant and abandoned property. It is not possible for the OLS to calculate the number of applications to proceed in a summary manner that would be filed with the court. According to the AOC, 269,292 foreclosure complaints were filed in the Superior Court of New Jersey from 2005 through 2011. An article published by *The Star-Ledger* on September 19, 2012 (“Foreclosure Reviews Stall Housing Revival”) noted that about 60,000 foreclosures started since January 2008 await resolution. Information obtained from the AOC website indicates the following fee amounts: for filing a foreclosure complaint: \$200; for filing an answer to a foreclosure complaint: \$135; and for motions: \$35. An application to court, following the filing of a normal foreclosure complaint, to proceed in a summary manner would result in an additional \$35 motion fee.

*Section:*            *Local Government*

*Analyst:*          *Scott A. Brodsky*  
                         *Senior Fiscal Analyst*

*Approved:*        *David J. Rosen*  
                         *Legislative Budget and Finance Officer*

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