SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 567 (Durazo)
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TSG

SUBJECT

Termination of tenancy: no-fault just causes: gross rental rate increases

DIGEST

This bill makes a series of revisions to the existing statewide restrictions on residential rent increases and the existing statewide protections against eviction without just cause.

EXECUTIVE SUMMARY

The Tenant Protection Act of 2019 established limitations on the amount that residential landlords can raise the rent each year and stopped residential landlords from evicting tenants unless they have a specified legal justification. The idea was to shield California tenants against sudden, large rent increases and to provide responsible tenants with assurance that they will not ordinarily be uprooted from their homes. Experience has revealed a number of shortcomings in the Act. In addition, the author and sponsors want more done to tame spiraling rents. With these considerations in mind, this bill:
(1) lowers the amount by which residential landlords can increase the rent each year;
(2) extends the just cause for eviction protections to tenants in their first year in the unit;
(3) closes loopholes in the provisions for just cause evictions based on owner move-ins, substantial repair or remodel, or removal of the unit from the rental market; and
(4) provides mechanisms for redress of violations.

The bill is sponsored by the Alliance of Californians for Community Empowerment, California Rural Legal Assistance Foundation, Leadership Counsel for Justice and Accountability, PICO California, Public Advocates, and Western Center on Law & Poverty. Support comes from a variety of tenant organizations and homelessness prevention groups who argue the changes are essential to offering real help to struggling tenants. Opposition comes from landlord associations who contend that no changes are needed to existing law. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Enacts the Tenant Protection Act of 2019 (Act) with a sunset date of January 1, 2030. (Civ. Code §§ 1946.2, 1947.12, and 1947.13.)

2) Prohibits a property owner from terminating a residential tenancy without giving written notice of a just cause for the termination starting after all tenants have continuously and lawfully occupied the property for 12 months, or at least one adult occupant has done so for at least 24 months. (Civ. Code § 1946.2(a).)

3) Defines "just cause" as including either at-fault just cause or no-fault just cause. (Civ. Code § 1946.2(b).)

4) Provides that the following are at-fault just causes for terminating a tenancy:
   a) default in the payment of rent;
   b) breach of a material term of the lease, as specified. If the violation is curable, the tenant must be given three days opportunity to cure the violation, after which a three day notice terminating the tenancy with no further opportunity to cure may be given;
   c) maintaining, committing, or permitting the maintenance or commission of a nuisance, as defined;
   d) committing waste, as defined;
   e) refusal to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions;
   f) criminal activity by the tenant on real property, including any common areas, or any criminal activity or threat, as defined, directed at any owner or agent of the owner of the premises;
   g) assigning or subletting the premises in violation of the tenant's lease;
   h) refusal to allow the landlord to enter the dwelling pursuant to a lawful request;
   i) using the premises for an unlawful purpose, as defined;
   j) failure of a landlord's employee, agent, or licensee to vacate after being fired; or
   k) failure of the tenant to vacate after giving formal notice of intent to vacate. (Civ. Code § 1946.2(b)(1).)

5) Provides that the following are no-fault just causes for terminating a tenancy:
   a) intent to occupy the residential real property by the owner or their spouse, children, grandchildren, parents, or grandparents;
   b) withdrawal of the residential property from the rental market;
   c) the landlord's compliance with a government order or local ordinance that requires vacating the residence; or
   d) intent to demolish or to substantially remodel, as defined. (Civ. Code § 1946.2(b)(2).)

6) Requires a landlord who terminates the tenancy based on a no-fault just cause to provide relocation assistance to the displaced tenant in an amount equal to one month's rent, unless a court or government agency determines that the tenant caused the condition requiring the vacancy. The owner and tenant may also agree, in lieu of direct payment, to waive the payment of rent for the month after the notice of termination of tenancy is given. The relocation assistance is recoverable as damages in an eviction lawsuit if the tenant fails to vacate after expiration of the notice terminating the tenancy. (Civ. Code § 1946.2(d).)

7) Limits the amount that landlords can raise the rent on many types of residential property to five percent plus inflation up to a maximum of 10 percent. (Civ. Code § 1947.12(a).)

8) Provides that, upon meeting specified criteria, the owner of deed-restricted affordable housing or an assisted housing development is not subject to the rent increase limitations contained in the Act for purposes of setting the initial, post-restriction rental rate. (Civ. Code § 1947.13.)

9) Requires landlords to notify tenants of the Act's limitations on rent increases and its requirement of just cause for eviction, as specified. (Civ. Code § 1946.2(f) and 1947.12(e).)

10) Exempts the following types of rentals from the limitation on rent increases and the eviction protections:
    a) deed-restricted affordable housing for persons and families of very low, low, or moderate income, as defined;
    b) dormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution;
    c) housing subject to any form of rent or price control through a public entity's valid exercise of its police power that restricts annual increases in the rental rate to an amount less than that provided in (1), above;
    d) housing that has been issued a certificate of occupancy within the previous 15 years;
    e) a duplex in which the owner occupies one of the units; and
    f) residential real property that is alienable separate from the title to any other dwelling unit (primarily single-family residences and condominiums), provided that specified notice of the exemption is given to the tenants and the owner is not a:
        i) real estate investment trust;
        ii) corporation; or
        iii) limited liability company in which at least one member is a corporation.

11) Does not preempt any local laws limiting rent increases or the grounds on which a landlord may terminate a tenancy, except that any local just cause for eviction ordinance enacted after September 1, 2019 must be at least as protective, as defined, as the Tenant Protection Act of 2019. (Civ. Code § 1946.2(g).)

12) Directs the Legislative Analyst's Office to report to the Legislature regarding the effectiveness of the bill on or before January 1, 2023, including the impact of the rental rate cap on the housing market within the state. (Civ. Code § 1947.12(f).)

13) Provides tenants renting a park-owned mobilehome with the same anti-rent gouging and "just cause" eviction protections given to tenants in rental properties under the Tenant Protection Act of 2019, except that rent increases are capped at three percent plus inflation, up to a maximum of 5 percent. (Civ. Code § 798.30.5.)

This bill:

1) Extends the Tenant Protection Act's prohibition against eviction without legal justification to the first 12 months of a tenancy.

2) Reduces the maximum allowable annual rent increases pursuant to the Tenant Protection Act to five percent or the rate of inflation, whichever is lower.

3) Specifies that, in regard to the eviction of a tenant on the basis of a move-in by the owner or a relative of the owner pursuant to the Tenant Protection Act, the following additional rules apply:
   a) the tenant must not be over 60, disabled, or terminally ill, as defined; unless the person moving in is disabled and no other units are available at the property;
   b) the owner must have at least a 51 percent recorded ownership interest in the property;
   c) the person moving-in must not already live in another rental unit at the property and there must not be another comparable unit already available at the property, unless the person moving in needs the tenant's unit as an accommodation for a disability;
   d) the owner or owner's relative must occupy the unit within 90 days of when the displaced tenant vacates;
   e) the owner or owner's relative must use the unit as their primary residence for at least 36 continuous months;
   g) if owner or owner's relative does not move in within 90 days or does not continuously occupy the unit for at least 36 months, then the landlord must offer the former tenant the opportunity to return to the unit on the same terms as before, and also reimburse the former tenant for reasonable moving expenses incurred in excess of any relocation assistance already received; and
   h) the notice of termination of tenancy must contain the name, address of primary residence, and relationship to the owner of the intended occupant.

4) Specifies that, in order to evict a tenant on the basis of a demolition or substantial remodel pursuant to the Tenant Protection Act:
   a) the work must necessitate the tenant's absence for at least 60 days;
   b) the work must be necessary for compliance with codes that impact the tenant's health and safety;
   c) the landlord must have obtained all required government permits;
   d) the landlord must have provided the tenant with written notice informing the tenant of the tenant's option to select temporary relocation assistance with a right to return on the same terms or permanent relocation assistance. Temporary location assistance is comparable alternate housing in the same city as the rental unit or payment of all actual expenses associated with temporary relocation for the duration of the relocation. Permanent relocation assistance is a payment equal to six times the monthly fair market rent, as defined, for the area for a unit of comparable size.

5) Specifies that, in order to evict a tenant on the basis that the owner is withdrawing the property from the rental market pursuant to the Tenant Protection Act, the owner must:
   a) withdraw the property for at least 10 years;
   b) record a notice with the county recorder indicating the limitations on renting the property; and
   c) provide any elderly or disabled tenants who have lived at the property for one year or more up to a year of additional notice to vacate if requested.

6) Specifies that if a landlord who has evicted tenants pursuant to 5, above, or the successor in interest to such a landlord, returns the property to the rental market within five years of withdrawing it, then:
   a) the property owner is liable to the displaced tenants for damages;
   b) the property owner must offer the displaced tenant a right of first refusal to return to the property under the same terms as before; and
   c) the property owner is prohibited from re-renting the units at a rate higher than the rate in force when the property was withdrawn from the rental market plus any permissible intervening rent increases.

6) Empowers aggrieved tenants and public agencies to bring civil actions to enforce compliance with the Tenant Protection Act as modified by this bill, and provides for awards of attorney fees, costs, damages, and enhanced damages, as specified.

COMMENTS

1. Background on the Tenant Protection Act of 2019

For decades, several local California jurisdictions have imposed limits on how much residential landlords can raise the rent on their tenants each year, usually in combination with laws preventing landlords from terminating residential tenancies unless the landlord has a good reason for doing so.

Throughout the rest of the state and the many units exempt from local rent control however, landlords could raise rents by as much as they pleased and could force a tenant to move out for any legal reason or for no reason at all, subject only to requirements for one or sometimes two months' advance notice. (Civ. Code §§ 827 and 1946.)

That changed four years ago with the passage of the Tenant Protection Act of 2019. (AB 1482 (Chiu, Ch. 597, Stats. 2019.)) Confronted with a housing affordability crisis that left the majority of tenant households "rent-burdened," meaning that 30 percent or more of their income goes to the rent, and over a quarter of tenant households "severely rent-burdened" meaning that they spent over half their income on rent alone, the Legislature decided that the time for some statewide protections against evictions and large rent increases had come, at least for a period until, it was hoped, a sufficient jump in housing production could bring supply back into balance with demand.[1]

AB 1482 contains many nuances, but at its core, the bill did two things. First, it protected tenants against sudden, dramatic rent spikes by limiting the amount that landlords could raise the rent each year to five percent plus inflation up to a maximum of ten percent. Second, AB 1482 required landlords to have and to state a good, legally-sanctioned reason before terminating a tenancy. Where the reason was not the tenant's fault – such as situations where the owner decides to occupy the unit, where the landlord undertakes demolition or a substantial remodel, or where the landlord elects to withdraw the property from the rental market – AB 1482 made sure that tenants received at least some financial assistance for relocating in the form of a payment equivalent to one month's rent.

As the opponents to this bill emphasize, AB 1482 was a hard fought and heavily negotiated piece of legislation.[2] The opponents characterize the outcome of that struggle as a historic agreement meant to endure. As evidence for that view, they point out that AB 1482 includes a sunset provision after ten years, preceded by an impact study to be carried out by the Legislative Analyst's Office. For their part, the author and sponsors of

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[1] *See,* Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1482 (2019-2020 Reg. Sess.) as amended Jun. 28, 2019 at pp. 5-12.
[2] *See* Sen. Com. on Judiciary, Analysis of Assem. Bill No. 3088 (2019-2020 Reg. Sess.) as amended May 12, 2020 at pp. 3-4.

the bill state that they were not part of and are unaware of any agreement to the effect that AB 1482 could never be revisited. Ultimately, as a purely legal matter, any agreement that may have been reached in relation to AB 1482 is not binding on the current Legislature. (*County Mobilehome Positive Action Committee v. County of San Diego* (1998) 62 Cal.App.4th 727, 734. "An act of one legislature is not binding upon, and does not tie the hands of future legislatures.")

2. Shortcomings of the Tenant Protection Act and proposed solutions

The premise behind this bill is that while the Tenant Protection Act of 2019 offered some important support to tenants caught up in California's housing affordability crisis, experience and reflection have revealed ways in which the Act needs to be strengthened if it is to provide genuine protection against heavy rent burdens and families falling into homelessness.

a. Lowering the rent caps

As mentioned, AB 1482 capped annual rent increases at five percent plus inflation up to a maximum of ten percent. By comparison with true rent control measures, in which the rise of rent is typically held to around the rate of inflation, AB 1482's permissible annual rent increases were quite high. As this Committee's analysis of AB 1482 noted, those rent caps still allowed for quite significant rent increases over time.[3] The real impact of AB 1482, as its author and sponsors acknowledged at the time, was to prevent price-gouging: scenarios in which landlords took advantage of the housing crisis and their tenants' extremely limited options to impose sudden, dramatic rent increases that the tenants would have little choice but to pay.

In the time since AB 1482 passed, rental housing affordability in California has not improved and homelessness has continued to grow. The two things are highly correlated. A 2020 U.S. Government Accountability Office study found a $100 median rent increase to correlate with a nine percent rise in homelessness in the same area.[4] Similarly, research conducted by Zillow in 2018 concluded that communities where people spend more than 32 percent of their income on rent tended to see the most rapid increase in homelessness.[5]

To provide greater protection to these tenants, this bill would lower the amount that landlords could increase their tenants' rent each year. Instead of five percent plus

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[3] *See,* Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1482 (2019-2020 Reg. Sess.) as amended Jun. 28, 2019 at pp. 5-12.
[4] *Homelessness: Better HUD Oversight of Data Collection Could Improve Estimates of Homeless Population* (Jul. 2020) U.S. Government Accountability Office https://www.gao.gov/assets/gao-20-433.pdf (as of Apr. 16, 2023) at p. 30.
[5] *Homelessness Rises Faster Where Rent Exceeds a Third of Income* (Dec. 11, 2018) Zillow Research https://www.zillow.com/research/homelessness-rent-affordability-22247/ (as of Apr. 16, 2023).

inflation up to a maximum of 10 percent, landlords would be limited to the rate of inflation up to a maximum of five percent. Unlike AB 1482, the caps proposed by this bill can accurately be described as true rent control: they provide tenants with an assurance that they will continue to get the basic benefit of the bargain they make with their landlord when they move in: the rent may go up over time, but it should stay about the same in proportion to the household's overall expenditures.

Opponents of this aspect of the bill argue that further limiting how much landlords can raise the rent cuts into some of the financial incentive to own and operate rental housing. Ultimately, the opponents assert, that will mean fewer landlords stay in the business. The rental housing supply will further contract, they say, exacerbating the imbalance between supply and demand that is driving the affordability crisis to begin with. As a result, the opponents argue, even if further limiting rent increases may prevent homelessness and increase housing stability in the short-term, over the longer term it could backfire.

The proponents respond to this concern by highlighting that the bill does not alter AB 1482's 15 year rolling exemption for newly constructed rental housing. That exemption is designed to ensure that statutory limitations on rent increases do not dissuade developers from investing in building new housing, thus helping to ensure that the supply of rental housing continues to expand.

For a discussion of the potential impact of rent control on residential housing supply, see Comment 3, below.

b. Expanding protections against eviction to new tenants

AB 1482 provided covered tenants with protection against being thrown out of their homes without good cause. In other words, it gave tenants assurance that so long as they behave responsibly and pay their rent on time, they will not be subject to arbitrary eviction.

This aspect of AB 1482's protections for tenants does not apply the moment that a tenant first moves in, however. Instead, it attaches only after all of the tenants have occupied the unit for at least 12 months or at least one of the occupants has lived there for at least 24 months. (Civ. Code § 1946.2(a).) By contrast, this bill would have AB 1482's protections against arbitrary eviction cover tenants from the moment that they move in.

The absence of AB 1482 protections for new tenants means, most obviously, that new tenants on month-to-month leases are still subject to the possibility of being evicted without the landlord having to provide a valid legal justification. (Tenants on a fixed-term lease are, pursuant to the lease, guaranteed not to be evicted arbitrarily for the duration of the fixed-term, which is usually, though not always, one year.)

From the landlord's perspective, the advantage of not having to state a valid legal justification for ending a tenancy is that it operates as a trump card. If the landlord does not have to state a valid legal reason for evicting the tenant, there is nothing for the tenant to dispute. This enables a landlord to evict tenants who simply rub the landlord the wrong way or for any other reason that the landlord does not want to have to go to the trouble of proving if the tenant challenges the eviction in court.

The policy concern associated with this power to evict without providing a valid legal cause is that it also enables unscrupulous landlords to evade detection when they are pursuing evictions that would otherwise not be lawful. The most obvious examples are situations involving discrimination and retaliation.

Supposing that what rubs the landlord the wrong way about a tenant is not that the tenant is messy or slow to return phone calls, but that the tenant turns out to be LGBTQIA+ or in a romantic relationship with someone of another race, or some other characteristic protected under anti-discrimination laws. (Civ. Code § 51; Gov. Code § 12955.) The landlord would not be able to kick the tenant out based on a valid legal cause, because the landlord does not have one. But if the landlord does not have to state a cause at all, then the landlord can achieve the unlawful purpose by terminating the tenancy without saying why. Ordinarily, there will be nothing the tenant can do about it, because the landlord's motivations remain hidden.

Similarly, if what rubs the landlord the wrong way about a tenant is that the tenant is unafraid to exercise the tenant's lawful right to insist on certain basic conditions like operable heat, plumbing, electricity, and the absence of insects and vermin (Civ. Code § 1941.1), the landlord can still try to get away with evicting that tenant. Such retaliation is prohibited by law (Civ. Code § 1942.5), but in the absence of a requirement that the landlord have and state a valid legal cause for undertaking the eviction, the landlord can try to accomplish what would otherwise be unlawful simply by remaining silent about the reason for terminating the tenancy.

c. Fixing loopholes in the no-fault just causes

AB 1482 created two categories of grounds on which a landlord could terminate a tenancy: at-fault and no-fault. AB 1482's at-fault grounds for eviction are things over which the tenant has at least some control: paying the rent on time; abiding by the terms of the lease; not creating waste or causing a nuisance. The no-fault grounds for eviction included three scenarios in which the tenant has done nothing wrong, but the landlord still has a legitimate need for the tenant to move out: (1) when the owner or a close relative of the owner has decided that they want to occupy the unit; (2) when the unit must be made vacant for a demolition or a substantial remodel; or (3) when the landlord has decided to remove the unit from the rental market altogether. In no-fault scenarios, AB 1482 requires landlords to soften the financial impact on the tenant of

having to move by offering the tenant relocation assistance in an amount equivalent to one month's rent.

Each of AB 1482's no-fault grounds for eviction are straightforward enough in spirit. However, the author and sponsors of this bill state that in practice and on reflection, all three grounds are structured in ways that make them too easy for landlords to game. That undermines not only AB 1482's eviction protections themselves, but AB 1482's protections against sudden, dramatic rent spikes as well.

Here is how. Supposing a landlord really wants to raise the rent for an apartment by 25 percent. This cannot be done in a single year under AB 1482 as long as the same tenants live there; it would take more like three to five years, depending on the rate of inflation. The landlord cannot evict the current tenants for the purpose of bringing in new tenants to whom the landlord will charge higher rent, because that is not a permissible reason for terminating a tenancy under AB 1482. Using one of AB 1482's no-fault just cause provisions, however, the landlord can probably get away with achieving the same outcome.

AB 1482's owner move-in provision does not state how long the owner or the owner's relative has to stay in the unit. Thus, a landlord could give notice of an owner move-in for the landlord's child, for instance, and then have the child move back out after a week. The landlord could then move new tenants in and charge them the desired 25 percent rent increase. Such a move arguably complies with the letter of the law, even if it definitely does not comply with the spirit. As a practical matter, moreover, the former tenants may never discover what actually happened, and because AB 1482 has no direct enforcement mechanism there may not be much the former tenants can do even if they do find out.

AB 1482's provision for eviction based on demolition or substantial remodel have no follow-up mechanism either. In some circumstances, the remodel has to be of a nature that requires a government permit, but nothing requires the landlord to actually pull the permit before terminating the tenancy. Thus, for instance, a landlord wanting to raise rents by 25 percent could notice an eviction on the basis of a substantial remodel, regain possession of the unit, make some modest repairs or adjustments (or decide not to do anything after all), move new tenants in, and charge them the desired 25 percent rent increase. Here again, as a practical matter, the former tenants probably would never find out what actually happened. If they did, the landlord would have plausible deniability as long as they had done something to the unit and, without an enforcement mechanism, there may not be much that the former tenants could do anyway.

AB 1482's provision for eviction based on withdrawal of the unit from the rental market suffers from similar deficiencies. Among other things, AB 1482 does not say how long the landlord has to withdraw the unit. A landlord wanting to raise the rent by 25 percent could terminate the current tenants by asserting an intent to withdraw the unit

from the market, keep the unit off the market for a week, then return the unit to the market, move new tenants in, and charge them the desired 25 percent rent increase. As in the scenarios above, this clearly violates the spirit of the law, but it is less clear that it violates the letter of it. And again, as a practical matter, it may not make much difference: the former tenant probably will not find out and may not have much of an option for redress even if they do.

This bill tightens up each of the no-fault just cause grounds for evictions in ways that make it much more difficult for landlords to game them.

With regard to owner move-in evictions, the bill adds new requirements that the owner or the owner's relative has to move-in within 90 days of when the previous tenant vacates, use the place as a primary residence, and remain for at least a year and a half. If not, the previous tenant has a right to return to the unit at the same rental rate and under the same lease terms as before. The former tenant is also entitled to reasonable moving expenses. The bill also prohibits an owner move-in where another, similar unit is already available at the same property. To protect elderly and disabled individuals in particular, the bill makes additional, specialized provisions for them, both in terms of the people moving in and the tenants who will be displaced.

With regard to evictions based on demolition or substantial remodels, the bill states that landlords can only pursue evictions when the underlying work will require the tenant to be out of the unit for at least 60 days and the landlord has pulled all of the required government permits for the work. In addition, when notifying the tenant that they must move out so the landlord can undertake the demolition or substantial remodel, the landlord has to offer the tenant a choice between temporary relocation or permanent relocation. If the tenant opts for temporary relocation, the tenant has the right to return to the unit on the same terms once the work is complete and the landlord must provide temporary relocation assistance to the tenant in the form of an equivalent place to live in the same city, or payment of all actual expenses associated with the temporary relocation. If the tenant opts for permanent relocation, the landlord must pay the tenant permanent relocation assistance in the amount of six times the monthly fair market rent for the area.

In relation to withdrawal of properties from the rental market, the bill adopts many elements of the Ellis Act. The Ellis Act is designed to deal with the same issue in the context of local rent control. The Ellis Act assures that landlords have the right to evict tenants in order to withdraw property from the rental market altogether, but also authorizes local jurisdictions to place safeguards around such removals to make sure they are not done as subterfuge. Similar to the Ellis Act, this bill would still allow evictions based on the withdrawal of the unit from the market, but the withdrawal must be for at least 10 years. If the landlord – or their successor in interest – puts the units back on the rental market within five years, then the former tenants are entitled to damages and are given a right of first refusal to return to the property at the previous

rental rates and under the same terms. In addition, the rents for all of the new tenancies must be the same or lower than what they would have been if the properties had not been withdrawn from the market. To help ensure compliance with these conditions over the years and through successive property owners, the bill requires landlords who are withdrawing units from the rental market to record notice of the resulting constraints on use of the property with the county recorder's office. All of this is intended to eliminate any financial incentive landlords might otherwise have to game the system using a feigned intention to withdraw the units from the market.

If they ultimately engage with the details of this bill, opponents may argue that aspects of the way the bill tightens up the no-fault just cause grounds for eviction go too far. Where further discussion reveals legitimacy to those concerns, the bill's provisions regarding the no-fault just cause grounds for eviction could be modified responsively. From a policy perspective, however, any modifications made should still accomplish the underlying intent of ensuring that AB 1482's no-fault, just cause grounds for eviction cannot be easily ignored or abused, as they can under existing law.

d. Establishing pathways to redress for violations

AB 1482 does not include any specific enforcement mechanisms. Presumably, if a landlord tried to evict a tenant for failing to pay a rent increase that was higher than AB 1482 allows, a court would refuse to allow it. Even that requires the tenant to know how to defend against an eviction in court or to somehow obtain legal counsel. It also requires that the tenant be willing and able to spend the necessary time dealing with a legal case. Upon prevailing, the tenant would likely win nothing more than the right to continue living in the same place with the rent increased by only the lawfully permissible amount.

Alternatively, a tenant might be able to bring an affirmative lawsuit against a landlord who tried to raise the rent beyond what AB 1482 allows, but it is not immediately clear what the tenant's damages would be, except perhaps rent overpayments if they were actually made. AB 1482 does not provide for statutory penalties or attorney fees, so it would also probably be challenging for the tenant to obtain legal counsel to take the case.

For the reasons set forth in the discussion of AB 1482's no fault, just cause eviction provisions, above, the lack of an enforcement mechanism for AB 1482 makes most of those protections effectively illusory as well.

Overall, as a 2022 study by U.C. Berkeley's Terner Center for Housing Innovation concluded:

> The protections provided by AB 1482 are only effective if landlords comply with the law. With no way of determining rates of

> compliance and no built-in enforcement mechanism, it is not clear how effective AB 1482's rent protections are. Research on other types of tenant protection policies consistently shows that tenants, particularly from vulnerable populations, are at a disadvantage in ensuring their rights are enforced. Without the development of accountability mechanisms, it will be difficult to achieve AB 1482's goals, even with robust education and outreach efforts.

This bill establishes mechanisms for enforcing AB 1482. Specifically, the bill provides that, if a landlord demands, accepts, receives, or retains any payment of rent in excess of the legal maximum, the tenant can bring a civil action seeking reasonable attorney's fees and costs, injunctive relief, and damages in the amount by which any payment demanded, accepted, received, or retained exceeds the maximum allowable rent. In addition, if the tenant shows that the landlord acted willfully or with oppression, fraud, or malice, then the tenant can seek an additional civil penalty three times the amount by which any payment demanded, accepted, received, or retained exceeded the maximum allowable rent.

The bill creates separate remedies for a violation of the eviction protections. There, the bill empowers a tenant to bring a civil action against a landlord who attempts to recover possession of a rental unit in violation of the protections against arbitrary evictions. A prevailing tenant is entitled to damages of not less than three times their actual damages – such as moving expenses, time spent finding and securing alternative housing, time the displaced tenant missed work, among other things – in addition to an award of attorney's fees and costs in cases that are not eviction cases.

The bill also authorizes public enforcement of both the maximum rent increase and eviction protection elements of the law by the state and the local government in which the rental unit is located.

3. <u>The debate over rent control and housing supply</u>

A frequent criticism of rent control is that it may decrease housing supply in the long run, or at least decrease the rate at which the housing supply grows. The argument is based in simple free market economic theory. Where there is sufficient demand to cause an increase in prices, a free market will respond with greater supply until the demand is met. Where prices cannot rise, supply will be dampened accordingly.

Several studies on the impact of rent control appear to bear this basic theory out. For example, a 2018 Stanford University research paper determined that San Francisco's rent control laws had reduced that city's housing supply by 15 percent, though it also noted that those same laws saved tenants significant amounts of money and increased

community stability.[6] Similarly, an earlier study of the effect of rent control in Cambridge, Massachusetts claimed that "roughly 10 percent of the city's rent-controlled housing stock was converted to condominiums and moved out from under the grasp of the ordinance."[7] Summarizing these and other studies, the Terner Center for Housing Innovation at U.C. Berkeley concluded that: "the literature […] suggests that strict rent controls […] could constrain new housing supply, reduce investment in housing quality, lead to the removal of existing units from the market."[8]

On the other hand, some other academic studies find that the impact of rent control on housing supply may be more muted. For instance, a 2018 U.C. Berkeley Haas Institute for a Fair and Inclusive Society paper asserted that "[c]laims that rent control has negative effects on development of new housing are generally not supported by research […]."[9] In a somewhat more mixed conclusion, a 2018 U.S.C. Dornisafe Center for Environmental and Regional Equity paper determined that "moderate regulations do not appear to decrease housing construction but may incentivize landlords to remove existing units from the rental market through condominium conversion or other methods. […]."[10]

A number of these studies raise the consideration of timing. Unlike the hypothetical commodities at issue in the textbook supply versus demand calculus, housing supply takes years to build. Thus, a boom in housing development might eventually stabilize rents by bringing supply into balance with demand, but any such balance is probably years away. Until that balance is achieved, the lack of adequate supply means tenants have no market-based solution for rapidly rising rents. They cannot move to cheaper housing because, essentially, there is not any more affordable housing to be found.

That timing consideration has led to some policy proposals for a combined approach: temporary imposition of rent control for the duration of a housing production blitz. For example, the 2019 Bay Area CASA Compact called for regional rent caps for an "emergency period" of 15 years during which the region would undertake a series of

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[6] Diamond, Rebecca, Tim McQuade, and Franklin Qian. *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco* (2018) American Economic Review, 109 (9): 3365-94 https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20181289 (as of Apr. 21, 2023).
[7] Navarro, P. (1985). "Rent Control in Cambridge, Massachusetts." Public Interest 78(4): 83- 100.
[8] *Finding Common Ground on Rent Control* (May 2018) U.C. Berkeley Terner Center on Housing Innovation https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/Rent_Control_Paper_053018.pdf (as of Apr. 20, 2023) at p. 4.
[9] Montojo, Barton, and Moore. *Opening the Door for Rent Control: Toward a Comprehensive Approach to Protecting California's Renters* (2018) U.C. Berkeley Haas Institute for a Fair and Inclusive Society https://belonging.berkeley.edu/sites/default/files/haasinstitute_rentcontrol.pdf?file=1&force=1 (as of Apr. 20, 2023).
[10] Pastor, Carter, and Abood. *Rent Matters: What are the Impacts of Rent Stabilization Measures?* (May 2018) U.S.C. Dornisafe Center for Environmental and Regional Equity https://dornsife.usc.edu/assets/sites/242/docs/Rent_Matters_PERE_Report_Final_02.pdf (as of Apr. 20, 2023).

policies intended to stimulate high-volume housing production.[11] The likely influence of the CASA Compact on AB 1482 can be seen both in AB 1482's rent cap and also in its 10 year sunset clause.

This bill would lower the rent caps adopted under AB 1482, but does not lift or extend AB 1482's sunset period, which remains set to expire in 2030, after one decade in effect. The bill also preserves AB 1482's 15 year rolling exemption for all new housing construction. For these reasons, while the bill's detractors argue that it would decrease housing supply, the author and sponsors believe the bill adequately addresses those concerns.

4. Arguments in support of the bill

According to the author:

> Too many tenants are facing unjust evictions, because of loopholes in existing law and because rents are rising at a rate working class Californians simply cannot afford. Although existing law provides for some basic protections from rent-gouging and unjust evictions, it has been proven that there are glaring loopholes in the law that have left too many tenants unprotected from eviction even when in compliance with their lease, and subject to dramatic spikes in rent. […] SB 567 is designed to safeguard people from abuses and ensure that renters can stay in their homes. We cannot let families lose their homes. It destabilizes their lives, kid's education, their safety net, and affects the community as a whole. Instead of only reacting, let us be proactive. Let's help people stay in their homes, that everyone has a place to live.

As sponsors of the bill, the Alliance of Californians for Community Empowerment, California Rural Legal Assistance Foundation, Leadership Counsel for Justice and Accountability, PICO California, Public Advocates, and Western Center on Law & Poverty jointly write:

> Even those who are protected by the [Tenant Protection Act] TPA's rent cap provisions can face a rent increase of as high as 10 percent each year, far too high for many struggling renters and unnecessary for landlords–increasingly large corporate entities–to make a reasonable return on their investment. One of the central goals of the TPA was to prevent unjust evictions without cause. Unfortunately, […] renters too often find that the "no-fault"

[11] *CASA COMPACT: A 15-Year Emergency Policy Package to Confront the Housing Crisis in the San Francisco Bay Area* (Jan. 2019) Committee to House the Bay Area https://mtc.ca.gov/sites/default/files/CASA_Compact.pdf (as of Apr. 20, 2023).

> provisions […] provide no meaningful protection at all. Landlords too easily claim to be doing one of these things without any requirement of proof or any post-eviction obligation to follow through. "Withdrawal from the rental market" and "substantial rehabilitation" in particular have become magic words for landlords seeking a free pass to avoid all of the protections of the TPA. Because the law lacks sufficient parameters–parameters that are common in many locally enacted rent stabilization ordinances–landlords can assert a no-fault just cause as the reason for eviction without having to prove anything about their actual intent. Tenants facing an unjust eviction cloaked in these magic words are nearly powerless to defend themselves. The result is rising evictions and, for the most vulnerable tenants, the very real prospect of homelessness. […] SB 567 responds to the present-day reality faced by millions of California renters and provides greater housing stability for more renter households by strengthening the Tenant Protection Act, closing easily exploitable loopholes, and providing for robust enforcement.

In support, the Service Employees International Union – California State Council writes:

> Loopholes in just cause protections have allowed landlords to evict long term tenants and raise rents to truly unaffordable levels, leaving many unprotected during the most vulnerable years since AB 1482's adoption, which have included the pandemic, an economic recession, and times of historically high inflation. SB 567 offers permanent protections that seal off loopholes in AB1482 which have been routinely exploited by bad actor landlords, causing a rise in homelessness and a rental market most Californians are already struggling to keep up with.

5. Arguments in opposition to the bill

In opposition to the bill, the California Apartment Association writes:

> […]AB 1482, crafted by tenant organizations, had over 130 organization supporters. Our organization came to the table, and a balance was struck on the bill. This was historic. […] To now propose to rewrite AB 1482 - claiming the need for more stringent rent caps and necessary clean up in the law - fails to acknowledge the extensive good faith work that was done. AB 1482 was a major undertaking. No amendments to the law are necessary or needed. Furthermore, due to the COVID-19 pandemic and various state of emergency proclamations, the state rent cap and just-cause eviction

> law (AB 1482) has not truly taken effect. […]. SB 567 is an extreme approach […].

In further opposition to the bill, the Southern California Rental Housing Association writes:

> AB 1482 was a carefully negotiated bill between all effected parties with a 10-year lifespan. The continued chipping away at it makes it harder for property owners to effectively manage their properties. AB 1482 requires that, "On or before January 1, 2030, the Legislative Analyst's Office shall report to the Legislature regarding the effectiveness of this section and Section 1947.13. The report shall include, but not be limited to, the impact of the rental rate cap pursuant to subdivision (a) on the housing market within the state." We are at a loss as to why the Legislature would significantly amend AB 1482 prior to the LAO report regarding its efficacy.

SUPPORT

Alliance of Californians for Community Empowerment (sponsor)
California Rural Legal Assistance Foundation (sponsor)
Leadership Counsel for Justice and Accountability (sponsor)
PICO California (sponsor)
Public Advocates (sponsor)
Western Center on Law & Poverty (sponsor)
Abriendo Puertas/Opening Doors
AIDS Healthcare Foundation
Alliance San Diego
American Federations of State, County, and Municipal Employees
California Catholic Conference
California Community Living Network
California Democratic Renters Council
California Environmental Justice Alliance Action, a Project of Tides Advocacy
California Labor Federation
California Pan-Ethnic Health Network
California School Employees Association
California State Council of Service Employees International Union
Change Lab Solutions
The Children's Partnership
City of Santa Monica
City of West Hollywood
Coalition for Humane Immigrant Rights
Community Coalition

Community Health Councils
Consumer Attorneys of California
Culver City Democratic Club
Disability Rights California
East Bay for Everyone
East Bay Housing Organizations
Fresno Barrios Unidos
Healing and Justice Center
Housing California
Human Impact Partners
John Burton Advocates for Youth
Latino Health Access
National Association of Social Workers – California Chapter
Pomona Economic Opportunity Center
Power California
Prevention Institute
Public Health Advocates
Regional Asthma Management and Prevention
Service Employees International Union – California State Council
State Building and Construction Trades Council of California
Strategic Actions for a Just Economy
TechEquity Collaborative
United Way of Greater Los Angeles
Vision y Compromiso
Voices for Progress
6 individuals

OPPOSITION

California Apartment Association
California Association of Realtors
California Business RoundtableCalifornia Mortgage Bankers Association
Southern California Rental Housing Association
Western Manufactured Housing Communities Association
6 individuals

RELATED LEGISLATION

Pending Legislation: SB 466 (Wahab, 2023) restores the authority of local jurisdictions to impose rent control, should they choose to do so, on residential rental property that is at least 15 years old, except for single-family residences and condominiums. SB 466 is pending amendment and referral to the Senate Floor.

SB 863 (Allen, 2023) extends from three to seven days the amount of time that a tenant has to cure a noticed violation of the lease before a landlord may proceed to terminate

the tenancy for the violation. SB 863 is currently pending consideration before this Committee.

Prior Legislation:

AB 2713 (Wicks, 2022) sought to close loopholes in the Tenant Protection Act that make it possible for landlords to terminate tenancies based on owner move-ins, substantial repairs or remodels, or removal from the rental market without actually carrying those things out.

AB 978 (Quirk-Silva, Ch. 125, Stats. 2021), among other things, extended the coverage of the Tenant Protection Act of 2019 to mobilehome residents who rent park-owned mobilehomes with modified rent increase limitations of three percent plus inflation up to a maximum of five percent.

SB 1190 (Durazo, Ch. 205, Stats. 2020), before being amended, included a provision that would have made the Tenant Protection Act enforceable by the Attorney General, a city attorney, district attorney, or county counsel, and would have authorized the legislative body of a local government to designate a local agency to investigate and enforce the provisions of the Act, as provided.

AB 3088 (Chiu, Ch. 37, Stats. 2020), among other things, made minor clarifying and technical revisions to the Tenant Protection Act of 2019.

AB 1482 (Chiu, Ch. 597, Stats. 2019) limited rent-gouging in California by placing an upper limit on annual rent increases: five percent plus inflation up to a maximum of 10 percent. To prevent landlords from engaging in rent-gouging by evicting tenants, AB 1482 also required landlords have and state a just cause, as specified, in order to evict tenants who have occupied the premises for at least a year. Both the rent cap and the just cause provisions are subject to exemptions including, among others: housing built in the past 15 years and single family residences unless owned by a real estate trust or a corporation. AB 1482 sunsets January 1, 2030.

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