

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 847 (Hurtado)

Version: March 28, 2022

Hearing Date: April 26, 2022

Fiscal: Yes

Urgency: No

TSG

SUBJECT

COVID-19 relief: tenancy: grant program

DIGEST

This bill establishes the framework, without appropriation, for a program that would provide grants to landlords who have been unable to obtain compensation for their tenants' unpaid pandemic-era rent through other means.

EXECUTIVE SUMMARY

In response to the economic fallout from the COVID-19 pandemic, California enacted a series of protections against the eviction of residential tenants for failure to pay the rent or other financial obligations under the lease. While never relieving tenants from their duty to pay the rent to their landlords in full, California's protections initially prevented tenants from being evicted for nonpayment if the tenant met certain requirements, leaving landlords to sue those tenants for payment of the rent in a standard civil or small claims action. Later, after an infusion of federal funding for this purpose, California allowed landlords to evict tenants for nonpayment of rent, but only after the landlord unsuccessfully attempted to obtain emergency rental assistance to cover the rental debt owing. In some cases however, landlords still may not have received compensation for unpaid pandemic-era rent. This can happen if the landlord has been unable to collect on the civil or small claims judgment awarded to them, if their tenant had too much income to qualify for the emergency rental assistance program, if their tenant refused to cooperate with their application for emergency rental assistance, or if it is simply taking a very long time for the emergency rental assistance application to be processed. This bill establishes the framework - but no funding - for a grant program intended to compensate landlords who find themselves in one of these scenarios.

The bill is sponsored by the California Apartment Association. Support comes from regional landlord organizations and representatives of local jurisdictions who assert that landlords should be given additional avenues to recover rent that went unpaid during the worst of the pandemic. Opposition comes from two tenant advocate organizations who question whether this is the best use of state resources. The bill passed out of the Senate Housing Committee by a vote of 8-0. 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) Appropriates \$5.2 billion in emergency rental assistance funds to California, for distribution through states, tribes, and local governments with a population of at least 200,000, as directed. (Subtitle A of Title V of Division N of the federal Consolidated Appropriations Act of 2021 (Public Law 116-260) § 501; American Rescue Plan Act of 2021 (Public Law 117-2) § Section 3201.)
- 2) Establishes the COVID-19 Tenant Relief Act of 2020, which provides temporary protection against eviction for nonpayment of rent that accrued from March 1, 2020 to September 31, 2021 as follows:
 - a) From March 1, 2020 to August 31, 2020: to tenants who timely sign and return declarations of COVID-19-related financial hardship in response to a demand for payment from their landlord.
 - b) From September 1, 2020 to September 30, 2021: to tenants who timely sign and return declarations of COVID-19-related financial hardship in response to a demand for payment from their landlord and pay 25 percent of the rent that came due during this time period by September 30, 2021. (Code Civ. Proc. §§ 1179.01 – 1179.07.)
- 3) Establishes the COVID-19 Rental Housing Recovery Act, which provides temporary protection against eviction for nonpayment of rent that accrued during the time period between October 1, 2021 and March 31, 2022, with specified exceptions, as follows: in order to obtain a summons or judgment for eviction, the landlord must demonstrate to the court, through specified declaration and evidence, that the landlord has unsuccessfully endeavored to obtain emergency rental assistance from the pertinent government program (Code Civ. Proc. §§ 1179.08 – 1179.15.)
- 4) Establishes the state Emergency Rental Assistance Program (ERAP) for the distribution of rental assistance funds in response to the COVID-19 pandemic. (Health and Saf. Code §§ 50897-50897.6.)
- 5) Requires ERAP funds to prioritize tenant households disproportionately impacted by COVID-19 as follows:
 - a) first priority shall be households with a household income that is not more than 50 percent of area median income (AMI), any eligible households that receive a notice to demanding payment of rental debt accumulated during the COVID-19 recovery period, as specified, or an unlawful detainer (UD) summons pertaining to rental debt owed and accumulated due to a COVID-19 hardship, as specified;

- b) second priority shall be communities disproportionately impacted by COVID-19, as determined by HCD; and
 - c) third priority shall be eligible households that are not otherwise prioritized as described in (a) and (b) to include eligible households with a household income that is not more than 80 percent of AMI. (Health & Saf. Code § 50897.1(b).)
- 6) Specifies that funds made available to an ERAP grantee, unless otherwise specified, shall be as follows:
- a) rental arrears;
 - b) prospective rent payments;
 - c) utilities, including arrears and prospective payments for utilities;
 - d) any other expenses related to housing provided under federal law; or
 - e) any additional use authorized under federal law and guidance. (Health & Saf. Code § 50897.1(c).)
- 6) Provides that assistance for rental arrears may be provided as a payment directly to a landlord on behalf of an eligible household by entering into an agreement with the landlord, subject to both of the following:
- a) assistance for rental arrears shall be set at compensation of 100% of an eligible household's unpaid rental debt accumulated on or after April 1, 2020; and
 - b) acceptance of a payment is conditioned on the landlord's agreement to accept the payment as payment in full of the rental debt owed during the specified period. (Health & Saf. Code § 50897.1(d).)
- 7) Provides that a member of an eligible household may directly apply for rental arrears assistance from an emergency rental assistance program, subject to the following conditions:
- a) assistance for rental arrears pursuant to this subdivision shall be set at compensation of 100% of the eligible household's unpaid rental debt accumulated on or after April 1, 2020;
 - b) upon receipt of assistance, the eligible household shall provide the full amount of rental arrears to the landlord within 15 days of receipt of the funds, as specified; and
 - c) funds used to provide assistance for prospective rent payments for an eligible household shall be set at 100% of the eligible household's monthly rent. (Health & Saf. Code § 50897.1(e).)

This bill:

- 1) Defines the following terms, for purposes of the bill:
- a) "COVID-19 rental debt" means unpaid rent or other unpaid financial obligations of a tenant under the tenancy that came due between March 1, 2020 and September 30, 2021;

- b) "landlord" means the owner of a residential real property, the owner of a residential rental unit, the owner of a mobilehome park, the owner of a mobilehome park space or lot, or the agent of any of the foregoing;
 - c) "qualified applicant" means a landlord who has been unable to obtain emergency rental assistances for specified reasons or a landlord who has obtained a civil money judgment against a tenant for COVID-19 rental debt.
 - d) "tier one applicant" means a qualified applicant who is not a real estate investment trust, as defined, a corporation, a limited liability company in which at least one member is a corporation, or an owner who has requested more than one hundred thousand dollars (\$100,000) in grants from the program.
- 2) Creates the COVID-19 Tenancy Grant Program (CTGP) at the Department of Housing and Community Development (HCD).
 - 3) Requires an application to meet the following criteria in order to be considered a "completed application" eligible for a CTGP grant:
 - a) The application shall include an explanation as to why the landlord is a qualified applicant and any of the following evidence, if applicable, supporting that explanation:
 - i. Proof that the landlord applied to ERAP.
 - ii. Proof of a final decision rendered by HCD for ERAP.
 - iii. A copy of the civil judgement against the tenant.
 - b) The application shall include a statement, signed under penalty of perjury by the landlord attesting to both of the following:
 - i. A program grant constitutes full satisfaction of the tenant's obligations to the landlord with respect to the COVID-19 rental debt.
 - ii. The amount requested in the application is the actual amount of COVID-19 rental debt owed by the tenant.
 - 4) Directs HCD to award grants to tier one applicants before processing applications from any other applicants but otherwise to award grants on a first-come, first-served basis.
 - 5) Provides that a CTGP grant, up to 100% of a COVID-19 rental debt, will be deemed to satisfy a civil money judgment for COVID-19 rental debt that is the subject of the CTGP grant application.
 - 6) Requires a landlord, who receives a program grant, to return the amount of the grant to HCD if the landlord receives money from the State Rental Assistance Program for the tenant and property for which the program grant was awarded.
 - 7) Provides that money for the program shall be available upon appropriation by the legislature.

8) Sunsets the program on January 1, 2025.

COMMENTS

1. A brief history of California's response to the COVID-19 pandemic as it relates to residential rental housing

Before the COVID-19 pandemic struck, California faced a serious housing affordability crisis. A huge fraction of tenants were considered rent-burdened, many of them severely rent-burdened. Average rent increases were outpacing average earnings by a wide margin. Many Californians were struggling to afford housing and the other basic necessities of life. As a result, the housing affordability crisis had also become a homelessness crisis.

Then the COVID-19 pandemic struck. When Governor Newsom ordered Californians to shelter in place in March 2020, it immediately became apparent that many workers would lose some or all of their livelihoods through no fault of their own. In the context of an already rent-burdened populace, this meant that missed rent payments were sure to follow. Absent preventative action, widespread nonpayment of rent would lead to a tidal wave of evictions and a catastrophic surge in homelessness. On top of the humanitarian crisis this would have entailed, there were counterproductive public health consequences to consider as well: overcrowding in shared housing and communal quarters in homeless shelters would create ideal conditions for rapid transmission of the COVID-19 virus.

In the face of these serious problems and the risk that doing nothing could be catastrophic, California took extraordinary measures to keep people from losing their housing during the pandemic. Many local governments enacted ordinances and the Governor issued executive orders giving legal blessing to those ordinances. Ultimately, against a patchwork of local responses and a slow response from the other branches of state government, the Judicial Council intervened, issuing Emergency Rule 1. Emergency Rule 1 halted all residential evictions except those based on risks to public health and safety.¹

Emergency Rule 1 provided the Legislature with the necessary time to craft a statewide policy, which it eventually passed in late August of 2020. That bill, AB 3088 (Chiu, et al., Ch. 37, Stats. 2020), protected tenants against eviction for nonpayment of rent or other financial obligations under the tenancy for rent that accumulated between March 1, 2020 and January 31, 2021. To receive these protections, tenants had to respond to any demand for rent from their landlord with a declaration indicating that the tenant was unable to pay the rent due to COVID-19 related hardship. In addition, tenants had to pay at least 25 percent of the rent that accumulated between September 1, 2020 and

¹ *Emergency Rules Related to COVID-19* (April 6, 2020) Judicial Council <https://www.courts.ca.gov/documents/appendix-i.pdf> (as of Mar. 26, 2022).

January 31, 2021 before that period of time came to an end. AB 3088 also froze all local laws protecting tenants against eviction for nonpayment of rent in whatever form they took as of August 19, 2020, with a few specified modifications to any timelines for repayment in those local laws.

Throughout this initial period, landlords bore the primary financial burden in the equation between landlords and tenants because no funding was made available to compensate them for the rent that was going unpaid. In December 2020, the federal government passed legislation providing the rental assistance money needed for California to relieve much of the financial burden that landlords had been bearing. With this money on its way, California extended the protections of AB 3088 for an additional five months through June 2021 and established new rental assistance programs to distribute the federal money. (SB 91, Committee on Budget and Fiscal Review, Ch. 2, Stats. 2021)

Under the rental assistance programs, both landlords and tenants could apply for money to cover back rent and utilities that the tenant owed. All landlords are eligible to obtain rental assistance, provided that their tenants are eligible as well. Tenant eligibility is means-tested: tenant households only qualify if their income is at or below 80 percent of the annual median income for their area.

The rental assistance programs were carefully designed with the intention of striking a balance: enabling landlords and tenants to access the money they desperately needed with a minimum of bureaucracy on the one hand, while erecting sufficient barriers and controls to mitigate against the risk of fraud on the other. In spite of the good intentions, the ERAP programs in California (and in most other states) have been criticized for processing applications too slowly.² There have been improvements to the California rental assistance programs over time, and the Legislature modified and extended them in the early summer of 2021 after the federal government appropriated a second round of funding for that purpose. (AB 832, Chiu, Chap. 27, Stats. 2021.) According to recent HCD data, the state program has “stabilized more than 214,000 households across the state, amounting to nearly \$2.5 billion in direct assistance.”³ Still, there remains a substantial backlog and some landlords and tenants have reported waiting to hear back about their applications for months.

At the same time that it extended its emergency rental assistance programs, California also set the stage for entry into a new phase – the so-called recovery phase -- for its protections against residential evictions for nonpayment of rent. (AB 832, Chiu, Chap. 27, Stats. 2021.) COVID-19 vaccines had become widely available by that time and it

² DeParle, “Federal Aid to Renters Moves Slowly, Leaving Many at Risk” (Sep. 21, 2021) The New York Times <https://www.nytimes.com/2021/04/25/us/politics/rental-assistance-pandemic.html> (as of Mar. 26, 2022.)

³ Velasquez. *Letter to Senator Umberg and Assemblymember Stone Regarding Request to Extend Eviction Protections Beyond June 30, 2022* (Mar. 25, 2022). On file with the Committee.

appeared that the worst of the COVID-19 pandemic was over. A gradual reopening and economic recovery had begun to take hold. Accordingly, beginning on October 1, 2021, California law no longer permitted tenants to use declarations of COVID-19 hardship and partial rent payments to avoid eviction. Instead, the recovery phase policy allowed to proceed with evictions for nonpayment of rent, but only after attempting to obtain rental assistance to cover the unpaid amount. These recovery phase protections against eviction for nonpayment of rent applied to all tenants through March 31, 2022.

Beginning April 1, 2022, they apply only to situations in which the landlord or tenant filed an emergency rental assistance program on or before the March 31, 2022 deadline and that application is still pending. (AB 2179 (Grayson, Ch. 13, Stats. 2022.)) As of July 1, 2022, the eviction protections are scheduled to expire altogether.

Meanwhile, in January of this year, California appropriated additional state funds to pay for all emergency rental assistance applications submitted to the state program by March 31, 2022. (SB 115, Skinner, Chap. 2, Stats. 2022.) Accordingly, as of April 1, 2022, the state emergency rental assistance program stopped receiving new applications. Unless they enjoy protections under an applicable local ordinance, tenants who are unable to pay the rent that accrues from April 1, 2022 on will be subject to eviction based on the old, pre-pandemic rules. Under those rules, if a tenant is late or short on the rent, they are entitled to receive a notice and a short window in which to either pay the rent owed in full or vacate the premises. (Code Civ. Proc. § 1161(2).) If the tenants do neither within just three court days, then the landlord may proceed to court seeking an order for the tenants' eviction.

2. Methods for landlords to recover unpaid pandemic-era rent

The pandemic-era legislation providing emergency rental assistance and protecting tenants against eviction for nonpayment of rent offered two primary ways for landlords to recover pandemic-era rent owed to them if the tenant would not or could not pay voluntarily.

The first method is for the landlord to sue the tenant for the money owed. Since November 1, 2021, landlords have been able to bring such lawsuits in regular civil court or in small claims, where the procedure is simpler. (Code Civ. Proc. § 116.223.) To make it easier to process these claims, the pandemic-era rental housing legislation lifted the cap on small claims jurisdiction for claims based on pandemic-era rental debt. (*Ibid.*) Whether through civil court or small claims, once the landlord obtains a judgment against their tenant, the landlord can begin trying to collect on that judgment through any of the standard collection mechanisms. For example, the landlord can try things like levying on bank accounts, garnishing wages, and placing liens on property. As in any other attempt to collect on a court judgment, the wealthier the tenant is and the more assets the tenant has, the more likely the landlord is to succeed in obtaining the money owed pursuant to the judgment.

Initially, suing tenants in civil court or small claims was the only method available to landlords to try to recover the unpaid rent owed to them. With the arrival of federal funding in the spring of 2021, however, a second method opened up: applying to an emergency rental assistance program (ERAP) on behalf of the tenant.

Under the ERAP programs, the either the landlord or the tenant could initiate an application. (Health & Saf. Code § 50897.1.) Regardless of who initiated the application, however, in order to be processed and paid, the tenant had to cooperate by completing the tenant's portion of the application. Moreover, the tenant had to be eligible for rental assistance. Only tenant households with an annual income below 80 percent of the area median income qualified. So long as the tenant cooperated with the ERAP application and was eligible under the means test, the ERAPs would issue a check directly to the landlord for the amount of the unpaid rent. If the tenant did not cooperate or the tenant household made too much income to qualify for ERAP, then the landlord could not receive compensation through the ERAP. As discussed further in Comment 1, above, the state ERAP program stopped accepting new applications on April 1, 2022. Applications received before that deadline will still be processed and paid.

The combination of these methods for recovering unpaid pandemic-era rent – applying for emergency rental assistance or suing the tenant in civil or small claims court – means that landlords had and still have paths to recouping what they are owed. In several scenarios, however, those pathways are unrealistic, difficult to navigate, or may take an especially long time to yield results. In the first scenario, the landlord obtains a court judgment against the tenant for the pandemic-era rent owed, but the tenant is hard to collect from or simply judgment proof, meaning the tenant has so little in the way of income and assets that there is nothing the landlord can do to force the tenant to pay. In the second scenario, the landlord applied for compensation through the ERAP, but the tenant refused to cooperate in that application and it was denied as a result. In the third scenario, the tenant cooperated with the application, but the application was rejected nevertheless because the tenant earned too much income to be eligible for ERAP. In the fourth scenario, the landlord applied for ERAP, the tenant responded cooperatively and was eligible, but it is taking a very long time for ERAP to process the resulting check.

This bill would provide landlords facing these scenarios with a comparatively quick, simple, and certain way to obtain compensation for the pandemic-era rent still owed to them.

3. Prioritizing mom-and-pop landlords

In its present form, there is no specific appropriation attached to this bill. As a result, it is difficult to say how much money – if any – the proposed grant program would be able distribute to landlords who are still awaiting compensation for unpaid pandemic-era rent. Assuming that the appropriation is not sufficient to cover every landlord in the

state, however, a policy issues arises as to which landlords will receive grants and which landlords will not. As the bill was introduced, it proposed to dole out the grants on a first-come, first-served basis. Under such a system, large and institutional landlords were likely to receive the greatest number of grants, since they have the time, resources, and sophistication to assemble a high volume of grant applications quickly. Landlords of the “mom-and-pop” variety were more likely to lose out. In recognition of that dynamic, amendments taken by the author in the Senate Housing Committee require the proposed grant program to process applications from smaller landlords before proceeding to applications from corporations, institutional investors, and landlords who have already sought \$100,000 or more in grants.

To ensure that “mom-and-pop” landlords have a genuine opportunity to access these grant funds, however, further refinement may be needed. As the bill stands now, “mom-and-pop” landlords are placed at the head of the line for grants – once they apply. Until the mom-and-pop landlords apply, however, applications from corporations or institutional investors can move forward. As a result, it is possible that some, most, or even all of the grant money will be awarded to the large or institutional landlords before many mom-and-pop landlords even manage to apply. In order to make certain that mom-and-pop landlords have a genuine opportunity to obtain one of the program grants, the author proposes to offer further amendments in Committee that direct the program to process and award applications from mom-and-pop variety landlords for 60 days before beginning to award grants to other landlords, thus giving mom-and-pop landlords time to apply before all of the available money for grants has been used up.

4. Ensuring that courts receive notice that a judgment has been satisfied

The bill would enable landlords to obtain program grants based on civil or small claims court judgments in their favor for rent that went unpaid during the pandemic. The bill states that landlords accepting such a grant agree to do so in full satisfaction of the judgment. Nothing in the bill guarantees that the landlord or anyone else will notify the courts that the judgment has been paid off, however. As a result, the public record could continue to reflect an unpaid judgment, which would negatively affect the tenant’s ability to access credit and to obtain housing in the future.

To address this problem, the author proposes to offer an amendment in Committee that would utilize existing procedures for ensuring that satisfaction of a judgment gets recorded once a judgment has been paid off. Specifically, the amendments require a landlord to immediately file a satisfaction of judgment with the court and to clear any property liens with the county in question. (Code Civ. Proc. §§ 724.030 and 724.040.) If the landlord does not comply with these requirements, then the tenant has the right to demand filing of the satisfaction of judgment within 15 days. (Code Civ. Proc. § 724.050(a).)

If the landlord still fails to file the satisfaction of judgment even after this warning, then the tenant can apply to the court for an order requiring the landlord to file the satisfaction of judgment, but if the tenant has to resort to such extremes and prevails on the motion requesting the order, then the court must order the landlord to forfeit \$100 to the tenant in addition to any damages that the tenant has sustained. (Code Civ. Proc. § 724.050(d) and (e).) It is unlikely that many cases would reach this extreme, but in the event that they do, the tenant will almost certainly need the assistance of an attorney to navigate the court procedures involved. To ensure that tenants can obtain legal representation in such a scenario, the proposed amendments provide that a prevailing tenant could obtain a modest attorney's fee award. Making this attorney's fee award available should incentivize private attorneys to assist tenants with these cases when all prior efforts to get the landlord to file the satisfaction of judgment voluntarily have failed.

To ensure that landlords are aware of their duty to file a satisfaction of judgment under these provisions, the amendments further require the grant program to notify landlords about those duties at the same time that it issues a grant award.

Taken together, these amendments provide a simple, well-established method for ensuring that when a landlord receives a grant on the basis of a judgment for unpaid rent, a corresponding satisfaction of judgment will be filed with the court and the tenant will no longer have an outstanding judgment on their record.

5. Ensuring tenants remain housed

The primary goal of this legislation is to compensate landlords for rent they did not receive during the pandemic era. It would be counterproductive to the public interest in keeping people housed, however, if taxpayers footed the bill for this compensation program only to have landlords take the money and then promptly evict the tenants. Nothing presently in the bill prevents this from happening, however. Given that, the author proposes to offer an amendment in Committee that would require landlords not to evict the tenants without an at-fault just cause for some period, to be determined upon further discussion, after accepting the grant payment. Tenants would still be required to pay rent, obey the lease terms, and refrain from damaging the rental property, but so long as they did so, the landlord would not be able to evict them.

6. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- give mom-and-pop landlords time to apply for grants before larger, institutional landlords are able to do so;
- provide a mechanism to ensure that landlords record a satisfaction of judgment after receiving a grant paying off that judgment; and

- prevent the recipient of a grant under the program, for a period to be determined, from proceeding to evict the tenant without an at-fault cause.

A mock-up of the amendments in context is attached to this analysis.

7. Arguments in support of the bill

According to the author:

As of July 2021, more than 1.8 million homeowners were behind on their mortgages. Many of these homeowners are owners of rental property. Once federal mortgage forbearance ends, they may be forced to remove their rental units from the market and sell them to avoid foreclosure, requiring renters to move and leaving fewer rental properties available. The Federal Emergency Rental Assistance Program (the “Program”) has provided \$5.2 billion to California to pay rent for some low-income tenants who have been unable to pay their rent. However, the Program only provides rental assistance for tenants who make less than or equal to 80% of the area median income (“AMI”). There are droves of homeowners with tenants who are behind on their rent who will never receive any form of government rental assistance, because they earn too much money to qualify for the Program. SB 847 closes the coverage gap for tenants and homeowners who have applied and were rejected from the state rental assistance program by establishing a grant program to distribute funds to tenants and homeowners upon appropriation by the Legislature.

As sponsor of the bill, the California Apartment Association writes:

There are droves of rental property providers, especially small “mom and pop” owners, with tenants who are behind on their rent but who will never receive any form of government rental assistance. This issue is due to the fact that these tenants do not qualify because they made too much money (and yet they didn’t pay the rent) or have refused to apply to the current state rental assistance program. At the same time, these tenants were allowed by law to self-certify that they were negatively affected by COVID and were in turn provided tenant protections under state law. Rental property owners with tenants who have failed to apply or who fail to qualify for funding have gone two years without rent payments and now struggle to pay their mortgage, property taxes, and other associated bills. Some owners will face foreclosure or will have to sell their homes. Unfortunately, due to federal statutes, the

current state rental assistance program does not provide rental assistance for owners with tenant who fail to apply for funding. In addition, the program does not cover tenants who claim they were affected by COVID and yet they earned more than 80 percent of the area median income. The federal restrictions have left many rental property owners without rental assistance during the pandemic. SB 847 would close the coverage gap for rental property owners who have applied and were rejected due to a tenant's income or failure on the part of the tenant to apply.

8. Arguments in opposition to the bill

In opposition to the bill, California Rural Legal Assistance Foundation, Inc., and the Western Center on Law & Poverty jointly write:

We are sensitive to the author and sponsor's stated desire to provide relief to small landlords whose tenants have been unable to pay the rent, resulting in financial hardship to the landlord. However, SB 847 in its current form goes far beyond that. Unlike the ERAP program that ended March 31, which was intended to provide rental assistance to lower-income households to keep them housed, this program provides assistance to landlords without regard to tenant need and without regard to whether the tenant is or will remain in place after the rental assistance is received. [...] In addition, the bill allows for 100% reimbursement for a judgment obtained against a tenant regardless of the tenant's income, putting the state in the position of paying off the judgments of well-resourced tenants who have the ability to pay or against whom the landlord could easily collect the debt using conventional means. We see no reason to use limited state resources for this purpose. [...] We regrettably must oppose SB 847 unless it is amended to prioritize the most vulnerable tenants and landlords facing eviction or property loss, mitigate the impacts of the pandemic on our housing crisis by keeping renters housed, and protect the economic well-being of our communities by shielding tenants against negative credit impacts of rent they were unable to pay due to no fault of their own.

SUPPORT

California Apartment Association (sponsor)
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
Apartment Association, California Southern Cities

Association of United Richmond Housing Providers
Berkeley Property Owners Association
Steven Brandau, District 2 Fresno County Supervisor
California Association of Realtors
California Rental Housing Association
Paul Canepa, District 3 Councilmember, Stockton City Council
City of Bakersfield
City of El Cerrito
City of Fresno
City of Ontario
Donna Colson, Councilmember, City of Burlingame
Contra Costa County Board of Supervisors
Luis Chavez, District 5 Councilmember, Fresno City Council
East Bay Rental Housing Association
FPI Management
Brett Frazier, District 1 Madera County Supervisor
Fuller Enterprises
Nelson Esparza, President, Fresno City Council
Tyron Hampton, Councilmember, City of Pasadena
Sol Jobrack, District 1 Councilmember, City of Stockton
Mike Karbassi, District 2 Councilmember, Fresno City Council
Kevin Lincoln, Mayor, City of Stockton
Tyler Maxwell, Vice President, Fresno City Council
Nor CAL Rental Property Association, Inc.
North Valley Property Owners Association
Sal Quintero, District 3 Fresno County Supervisor
Robert Rickman, Fifth District Supervisor, San Joaquin County
San Francisco Bay Area Planning and Urban Research Association
San Gabriel Valley Economic Partnership
San Mateo County Economic Development Association
Santa Barbara Rental Property Association
Small Property Owners of San Francisco Institute
Southern California Rental Housing Association
Robert Torres, Councilmember, City of Pomona
Miguel Villapudua, District 1 San Joaquin County Supervisor
Chuck Winn, Chair, San Joaquin County Board of Supervisors
Terry Withrow, District 3 Stanislaus County Supervisor
2 individuals

OPPOSITION

California Rural Legal Assistance Foundation, Inc.
Western Center on Law & Poverty

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 747 (Hurtado, 2021) was substantially similar to this bill. SB 747 died in the Senate Housing Committee.

AB 2179 (Grayson, Ch. 13, Stats 2022) extended, through June 30, 2022, two key components of California's answer to the economic hardship that the COVID-19 pandemic brought upon residential landlords and tenants: (1) protections against eviction for nonpayment of rent or other financial obligations under the lease, but only in cases where an application for emergency rental assistance to cover the unpaid rent was pending as of March 31, 2022; and (2) preemption of additional local protections against eviction for nonpayment of rent that were not in place on August 19, 2020.

SB 115 (Skinner, Ch. 2, Stats. 2022) authorized cash flow loans to the state Emergency Rental Assistance Program and to locally-administered rental assistance programs to pay for all qualifying rental assistance applications submitted by March 31, 2022, with these loans to be paid back with federal funds for rental assistance reallocated to California from other jurisdictions. Requires the Department of Finance to forgive any amounts lent that are not covered by the federal reallocation.

AB 832 (Chiu, Ch. 27, Stats. 2021) extended and modified residential eviction protections for tenants facing COVID-19-related financial hardship, extended and revised certain aspects of the state's Emergency Rental Assistance Program, and established a process for connecting tenants with rental assistance funds and forestalling their eviction between October 1, 2021 and March 31, 2022.

AB 81 (Budget, Ch. 5, Stats. 2021) made technical and conforming changes to SB 91.

SB 91 (Budget, Ch. 2, Stats. 2021) extended and modified protections initially established under AB 3088, and established a government rental assistance program to help landlords and tenants address COVID-19 financial hardship.

AB 3088 (Chiu, et al., Ch. 37, Stats. 2020) established protections for nonpayment of rent due to COVID-19-related financial hardship, subject to numerous conditions, until January 31, 2021.

PRIOR VOTES:

Senate Housing Committee (Ayes 8, Noes 0)

Amended Mock-up for 2021-2022 SB-847 (Hurtado (S))

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) As of July 2021, more than 1,800,000 property owners were behind on their mortgages. Many of these property owners are landlords. When federal mortgage forbearance ends, these landlords may be forced to remove their rental units from the market and sell them in order to avoid foreclosure.

(b) The State Rental Assistance Program (program) provides rental assistance only for tenants who make less than or equal to 80 percent of the area median income. There are still many landlords with tenants who are behind on their rent and who will not qualify for any form of government rental assistance because they earned too much money to qualify for the program.

(c) Although the program has been accepting rental assistance applications for most of 2021, payment to landlords and tenants, especially small landlords who are in desperate financial straits, has been untenably slow.

(d) Some tenants have claimed a COVID-19 hardship and yet do not qualify for rental assistance. Unfortunately, the COVID-19 Tenant Relief Act (CTRA) self-certification process allows only tenants to state their cases with no ability for landlords to challenge a self-certification of COVID-19-related financial distress.

(e) Upon the expiration of CTRA, tenants with rental debt who do not qualify for the program may face small claims judgments that will unnecessarily burden their financial stability.

SEC. 2. Chapter 17.1 (commencing with Section 50897.9) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 17.1. COVID-19 Tenancy Grant Program

50897.9. As used in this chapter:

(a) "Complete application" means an application for a program grant that satisfies all of the provisions of Section 50897.11.

(b) "Covered time period" means the time period between March 1, 2020, and September 30, 2021.

(c) "COVID-19 rental debt" means unpaid rent or any other unpaid financial obligation of a tenant under the tenancy that came due during the covered time period.

(d) "Department" means the Department of Housing and Community Development.

(e) "Landlord" means any of the following or the agent of any of the following:

(1) An owner of residential real property.

(2) An owner of a residential rental unit.

(3) An owner of a mobilehome park.

(4) An owner of a mobilehome park space or lot.

(f) "Program grant" means a grant of an amount equal to 100 percent of a COVID-19 rental debt owed to a qualified applicant.

(g) (1) "Qualified applicant" means a landlord who satisfies any of the following criteria:

(A) The landlord has applied for rental assistance funds pursuant to the State Rental Assistance Program and either of the following is true:

(i) The landlord has been notified of a negative final decision pursuant to paragraph (3) of subdivision (r) of Section 50897.1.

(ii) The landlord has been notified pursuant to paragraph (2) of subdivision (r) of Section 50897.1 that a completed application for rental assistance has been submitted by the landlord or the tenant, and both of the following are true:

(I) Twenty days have passed since the application was submitted.

(II) A final decision on the application has not been rendered.

(B) The landlord has obtained a civil money judgment against a tenant for COVID-19 rental debt.

(2) (A) A landlord is a "tier one applicant" if the landlord is a qualified applicant that is not any of the following:

(i) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(ii) A corporation.

(iii) A limited liability company in which at least one member is a corporation.

(iv) An owner who has requested more than one hundred thousand dollars (\$100,000) in grants from the program.

(B) Notwithstanding subdivision (b) of Section 50897.10, for the first 60 days after the date on which the program first accepts grant applications, the program shall process applications and provide grants for tier one applicants exclusively. Thereafter, the program shall provide grants to all tier one applicants before processing applications from providing grants to other applicants.

(h) "State Rental Assistance Program" means the rental assistance program created by Chapter 17 (commencing with Section 50897), including Option A, Option B, and Option C grantees.

50897.10. (a) The COVID-19 Tenancy Grant Program is hereby created under the administration of the department.

(b) The department shall award a program grant to a qualified applicant who submits a complete application on a first-come, first-served basis.

(c) (1) A program grant awarded pursuant to this section shall be deemed to satisfy a civil money judgment for COVID-19 rental debt that is the subject of the application with respect to which the grant was awarded.

(2) A landlord who obtains a program grant pursuant to this section shall comply with Sections 724.030 and 724.040 of the Code of Civil Procedure and is subject to Section 724.050 of the Code of Civil Procedure.

(B) An attorney who successfully obtains an order pursuant to subdivision (d) of Section 724.050 of the Code of Civil Procedure on behalf of a judgment debtor whose civil money judgment for COVID-19 rental debt was satisfied by a program grant pursuant to this section shall be entitled, in addition to any other available remedies, to an reasonable attorney's fees award of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1000).

(3) Any program grant awarded pursuant to this section shall be accompanied by a written statement informing the landlord of the landlord's legal responsibilities and potential liability under paragraph (2).

50897.11. An application for a program grant submitted to the department shall include ~~meet~~ all of the following ~~criteria~~:

(a) A statement under penalty of perjury verifying all of the ~~The application shall include following:~~

(1) That the landlord is a qualified applicant.

(2) That the landlord acknowledges that a program grant will constitute full satisfaction of the tenant's obligation to the landlord with respect to the COVID-19 rental debt.

(3) That the amount requested in the application is the actual amount of COVID-19 rental debt owed by the tenant.

~~(b) The an explanation as to why the landlord is a qualified applicant and any of the following evidence, as if applicable; supporting that explanation:~~

(1) Proof that a landlord applied to the State Rental Assistance Program.

(2) Proof of a final decision rendered by the State Rental Assistance Program.

(3) A copy of a civil judgment against the tenant.

~~(b) The application shall include a statement, signed under penalty of perjury, by the landlord attesting to both of the following:~~

~~(1) A program grant constitutes full satisfaction of the tenant's obligation to the landlord with respect to the COVID-19 rental debt.~~

~~(2) The amount requested in the application is the actual amount of COVID-19 rental debt owed by the tenant.~~

(c) An agreement, signed by the landlord, not to terminate any tenancy for which the landlord is seeking a grant award except on the basis of an at-fault just cause, as defined in paragraph (1) of subdivision (b) of Section 1946.2 of the Civil Code, for a period of _____ years commencing on the date of the application.

50897.12. A landlord who receives a program grant pursuant to this chapter shall return the amount of that grant to the department if the landlord receives money from the State Rental Assistance Program for the tenant and property for which the program grant was awarded.

50897.13. (a) The COVID-19 Tenancy Grant Program Fund is hereby established within the Treasury.

(b) Moneys in the fund shall be available, upon appropriation by the Legislature, for the purpose of awarding program grants to qualified applicants pursuant to this chapter.

50897.14. (a) The department may adopt, amend, and repeal rules, guidelines, or procedures necessary to administer the provisions of this chapter.

(b) The adoption, amendment, or repeal of rules, guidelines, or procedures authorized by this subdivision are exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

50897.15. This chapter shall remain in effect until January 1, 2025, and as of that date is repealed.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.