

Date of Hearing: June 28, 2021

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

AB 832 (Chiu) – As Amended June 28, 2021

CONSIDERATION OF FLOOR AMENDMENTS

SUBJECT: COVID-19 RELIEF: TENANCY: FEDERAL RENTAL ASSISTANCE

KEY ISSUE: IN ORDER TO PREVENT HUNDREDS OF THOUSANDS OF LOW-INCOME TENANTS FROM FACING THE RISK OF EVICTION AS THE COVID-19 PANDEMIC SUBSIDES, SHOULD THE STATE LEVERAGE FEDERAL RENTAL ASSISTANCE TO COMPENSATE LANDLORDS FOR UNPAID RENT, WHILE ALSO ENSURING THAT EVICTIONS FOR NONPAYMENT MAY ONLY PROCEED IF TENANTS DO NOT SEEK RENTAL ASSISTANCE?

SYNOPSIS

Over the last 15 months, the State of California has adopted a number of emergency policies to stop the spread of the COVID-19 virus and protect public health and safety. Among these policies were a series of eviction protections meant to keep renters housed. Widespread displacement could have undermined public health efforts, as evicted renters would likely have been forced either into homelessness or unsafe, overcrowded conditions which, in turn, would have promoted the spread of the virus.

This bill proposes to extend current COVID-19 eviction protections, which are set to expire on June 30, 2021, for an additional three months, until September 30, 2021. With over \$5.2 billion in federal rental assistance funds provided to California, the state now has an opportunity to make significant numbers of low-income tenants and their landlords whole.

Notable aspects of this bill are as follows:

- *Expanded payment rates for unpaid rent. The current requirement for landlords to accept 80% payments and forgive the remaining 20% is eliminated. Instead, landlords will receive 100% of rent owed. For landlords who have already received assistance, “top up” payments getting them to 100% payment will be processed automatically.*
- *Tenants will be able to apply for rental assistance directly.*
- *After current eviction protections end on October 1, 2021, tenants cannot be evicted during the next six months so long as they complete an application for government rental assistance.*
- *Court records related to eviction for nonpayment of rent during the pandemic and to collection of COVID-19 rental debt will be permanently sealed.*

If California were able to efficiently spend down the initial \$5.2 billion in federal rental assistance, it is likely that state and local governments would be able to receive significant additional funds to provide a vital lifeline to low-income renter households for many months or even years ahead. It is hoped that this bill will facilitate quick deployment of the state’s current rental assistance resources, while keeping housed as many Californians as possible.

SUMMARY: Extends the sunset date on residential eviction protections for tenants with COVID-19 hardships, subject to specified conditions, from June 30, 2021 to September 30, 2021, revises certain aspects of the State Rental Assistance Program, and establishes a process for connecting tenants with rental assistance funds between October 1, 2021 and March 31, 2022. Specifically, **this bill**:

- 1) Extends, until September 30, 2021, COVID-19 unlawful detainer (eviction) protections established originally by AB 3088 (Chiu, et al., Chap. 37, Stats. 2020) and extended by SB 91 (Budget, Chap. 2, Stats. 2021). Specifically:
 - a) Defines the “transition time period” as September 1, 2020 through September 30, 2021, inclusive.
 - b) Provides that tenants who return a 15-day “pay or quit” notice to their landlord and attest, as specified, to experiencing COVID-19 financial distress during the transition time period cannot be:
 - i) Found guilty of unlawful detainer for non-payment of rent or other financial obligations under the tenancy prior to October 1, 2021; and
 - ii) Subject to an unlawful detainer action for the transition time period rent if, by September 30, 2021, they pay 25% of missed rent and other financial obligations under the tenancy which accrued during that period.
 - c) Allows unlawful detainer cases based on causes other than non-payment of rent or other financial obligations under the tenancy to be brought as long as the basis for terminating the tenancy is one of the following:
 - i) An at-fault just cause for eviction, as defined in Civil Code Section 1946.2(b)(1); or
 - ii) A no-fault just cause for eviction, as defined in Civil Code Section 1946.2(b)(2), except that specified extra conditions apply to unlawful detainer cases based on intent to demolish or to substantially remodel the residential real property.
 - d) Extends preemption of local city and county non-payment eviction ordinances through March 31, 2022, continuing the policy of prohibiting changes to local non-payment eviction rules after August 19, 2020.
- 2) Makes conforming date extensions to tenant protections included in SB 91.
- 3) Extends to tenants in “Option C” jurisdictions (those which received direct funds from the Department of Treasury and elected to run independent rental assistance programs), the ability for the court to, in its discretion, reduce damages in an action seeking recovery of COVID-19 rental debt if the court determines that the landlord refused to obtain rental assistance from the state rental assistance program, provided specified conditions are met.
- 4) Makes permanent the policy of providing limited access to the court file (i.e., “masking”) for the following:
 - a) Unlawful detainer cases filed between March 4, 2020 and September 30, 2021 based on alleged nonpayment of rent; and
 - b) Actions to recover COVID-19 rental debt.

- 5) Extends, until October 1, 2021, the temporary prohibition on landlords selling or assigning a tenant's COVID-19 rental debt and establishes a permanent prohibition on selling or assigning a tenant's COVID-19 rental debt if the person's household income was at or below 80% of the area median income (AMI) for the 2020 or 2021 calendar year.
- 6) Revises various provisions related to the State Rental Assistance Program, including the following:
 - a) Eliminates the requirement that a landlord must accept 80% payment and forgive the remaining 20% of a tenant's rental debt as a condition of receiving assistance and instead provides 100% payment of an eligible tenant's missed rent since April 1, 2020.
 - b) Increases rental assistance payments to tenants whose landlords refuse to participate in the program from the existing 25% to instead cover 100% of an eligible tenant's missed rent since April 1, 2020.
 - c) Specifies that, if payment is provided directly to a tenant pursuant to b), the tenant must provide the full amount of rental arrears to the landlord in full within 15 business days of receiving the funds.
 - d) Provides that, if a tenant receiving payment pursuant to b) does not provide payment in the timeline specified in c), the landlord may charge a late fee not to exceed the amount charged for one late rental payment under the terms of the lease or rental agreement. Further specifies that failure to pay the late fee shall not be grounds for an unlawful detainer.
 - e) Automatically applies the 100% payment provisions in a) and b) to tenants and landlords who already received rental assistance funds.
 - f) Allows rental assistance payments to cover rent debt in situations where a tenant no longer occupies the residential unit and prioritizes the provision of such payments to cases where the tenant's landlord agrees to participate and receive payment.
 - g) Authorizes the program to reallocate unused funds by prioritizing assistance based on a jurisdiction's unmet need, rate of application submissions, rate of attrition, and rate of expenditures.
 - h) Requires all rental assistance programs, by September 15, 2021, to include the capacity to provide landlords, tenants, and the courts with specified information about rental assistance applications.
 - i) Specifies that a rental assistance program that does not comply with the requirements of h) shall be deemed ineligible to receive further block grant funds to continue provided rental assistance.
 - j) Indemnifies the state, the Department of Housing and Community Development (HCD), and the rental assistance program administrator from liability related to duplication of benefits.
 - k) Makes technical clarifications and updates definitions to reflect the provisions of federal rental assistance requirements pursuant to Section 3201 of Subtitle B of Title III of the American Rescue Plan Act of 2021 (Public Law 117-2).

- 7) Establishes the COVID-19 Rental Housing Recovery Act.
- 8) Defines the following terms under the COVID-19 Rental Housing Recovery Act:
- a) “Rental debt” means unpaid rent or other unpaid financial obligation of a tenant that has come due.
 - b) “COVID-19 rental debt” means unpaid rent or any other unpaid financial obligation under a tenancy that came due between March 1, 2020 and September 30, 2021.
 - c) “COVID-19 recovery period rental debt” means rental debt of a tenant that came due between October 1, 2021 and March 31, 2022.
 - d) “Rental debt that accumulated due to COVID-19 hardship” means COVID-19 rental debt, COVID-19 recovery period rental debt, or a combination of both, if it accumulated during a tenancy initially established before October 1, 2021. For purposes of this definition, a tenancy is deemed to have been initially established when the tenant first lawfully occupied the premises.

The definition also makes clear that the following do not initially establish a tenancy:

- i) The renewal of a periodic tenancy.
 - ii) The extension of an existing lease or rental agreement.
 - iii) The execution of a new lease or rental agreement with one or more individuals who already lawfully occupy the premises.
- e) “Government rental assistance program” means any rental assistance program authorized pursuant to the Health and Safety Code provisions that establish the State Rental Assistance Program.
 - f) “Pertinent government rental assistance program” means a government rental assistance program for the city, county, or city and county in which the property at issue is located.
 - g) “Approved application” means an application for rental assistance for which a government rental assistance program has verified the applicant’s eligibility, and the requested funds have been obligated to be paid to the applicant.
 - h) “Final decision” means that a government rental assistance program has made either of the following determinations regarding an application for rental assistance: the application is an approved application, or the application has been denied for any of the following three reasons:
 - i) The tenant is not eligible for government rental assistance.
 - ii) The government rental assistance program no longer has sufficient rental assistance funds to approve the application.
 - iii) The application remains incomplete for 15 days (excluding Saturdays, Sundays, and other judicial holidays) after the landlord properly completed the portion of the application that was the landlord’s responsibility, due to the tenant’s failure to properly complete the portion of the application that is the tenant’s responsibility.

The following outcomes are excluded from the definition of “final decision”:

- i) Rejection of an application as either incomplete or improperly completed by the landlord.
 - ii) Notification that an application is temporarily pending further action by the government rental assistance program or the applicant.
 - iii) Notification that the landlord applied to the wrong government rental assistance program for the property or rental debt at issue.
- 9) Requires, under the COVID-19 Rental Housing Recovery Act, that each government rental assistance program develop, no later than September 15, 2021, online and telephone mechanisms by which landlords, tenants, and the courts may do both of the following:
- a) Verify the status of an application for rental assistance, based upon the property address and a unique application number.
 - b) Obtain copies of any determination on an application for rental assistance. The determination must include the name of the tenant, the address of the property, and whether the application was approved or denied. In addition, the determination must include:
 - i) If the application was approved, the amount of the payment that has been approved, and the period and the type of rental debt to which that amount corresponds.
 - ii) If the application was denied, the reason for the denial, which may only be one of the three reasons for denial set forth in the definition of “final decision” above.
- 10) Specifies that a government rental assistance program which does not comply with 9) is deemed ineligible to receive further block grant allocations for providing rental assistance.
- 11) Modifies, under the COVID-19 Rental Housing Recovery Act, the content of notices demanding that a residential tenant (including a mobilehome park tenant) either pay COVID-19 recovery period rental debt or vacate the premises, in the following ways:
- a) The notice must provide tenants at least 3 days (excluding Saturdays, Sundays, and other judicial holidays) to pay the amount due or vacate.
 - b) The notice must include specified language informing the tenant about how to apply for rental assistance, including a telephone number that the tenant may call and a website that the tenant may access in order to start an application for government rental assistance.
 - c) The notice must include the following warning: “DO NOT DELAY! IF YOU DO NOT COMPLETE YOUR APPLICATION FOR RENTAL ASSISTANCE WITHIN 15 BUSINESS DAYS, YOUR LANDLORD MAY BE ABLE TO SUE TO OBTAIN A COURT ORDER FOR YOUR EVICTION.”
- 12) Requires any landlord who negotiated a rental agreement in Spanish, Chinese, Tagalog, Vietnamese, or Korean to provide the tenant with the notice under 11) in that language. Also requires the Business, Consumer Services, and Housing Agency to make available on its website an official translation of the notice into these languages, no later than September 15, 2021.

- 13) Makes clear that if a notice to a tenant to pay rent or vacate the premises fails to meet the requirements under 11) and 12), that the notice cannot be the basis for an unlawful detainer action or a default judgment against the tenant. The court may dismiss an action based on a defective notice on its own motion or the tenant's, and a tenant may raise the defective notice as a complete defense to an unlawful detainer.
- 14) Establishes, between October 1, 2021 and March 31, 2022, the following procedures for any unlawful detainer action for recovery of residential real property due to nonpayment of rental debt that accumulated due to COVID-19 hardship:
- a) No summons may issue unless a landlord files one of the following:
 - i) Both (1) a statement, under penalty of perjury, that the landlord completed an application for government rental assistance to cover the amount demanded from the tenants in the case, and that the application was denied; and (2) a copy of the final decision from the pertinent government rental assistance program denying the application.
 - ii) A statement, under penalty of perjury, verifying that all of the following are true:
 - A) Before filing the complaint, the landlord submitted a completed application for rental assistance to the pertinent governmental rental assistance program to cover the rental debt demanded from the defendants in the case. A "completed application" is defined under the Health and Safety Code as one in which the applicant has provided all necessary contact information and documentation required for a government rental assistance program to initiate a review of the application for eligibility.
 - B) 20 days have passed since the later of (1) the date the landlord submitted the application in A) or (2) the date the landlord served the tenant with the three-day notice to pay rent or vacate that is the basis of the unlawful detainer case.
 - C) The landlord has not received notice or obtained verification from the pertinent government rental assistance program indicating that the tenant has submitted a completed application for rental assistance to cover the rental debt demanded in the case.
 - D) The landlord has received no communication from the tenant that the tenant has applied for government rental assistance to cover the rental debt demanded in the case.
 - iii) A statement, under penalty of perjury, that the rental debt demanded in the complaint accumulated under a tenancy that was initially established on or after October 1, 2021. A summons that issues on a complaint based on this statement is not subject to the requirements of the COVID-19 Rental Housing Recovery Act.
 - b) The court may not issue a judgment or default judgment for unlawful detainer unless the court reviews the pleadings and evidence and finds that the requirements in a) were satisfied. In any contested case, the landlord has the burden of proving these requirements were met.

- 15) Includes codified findings and declarations that, in order to prevent an unlawful detainer judgment:
 - a) For rental debt that accumulated due to COVID-19 hardship that was incurred on or after October 1, 2021 and before March 31, 2022, a landlord must be compensated for all of the unpaid rent demanded in the notice that forms the basis of the complaint.
 - b) For rental debt that accumulated due to COVID-19 hardship that was incurred on or after September 1, 2020 and before September 30, 2021, a landlord must be provided 25% of the unpaid rent demanded in the notice that forms the basis of the complaint.
- 16) Authorizes the court to dismiss any action without prejudice if the criteria for issuing a summons under 14) a) above are not satisfied within 60 days of the complaint's filing.
- 17) Establishes a process for a tenant to avoid forfeiting their lease or rental agreement. The tenant may initiate this process by submitting verification to the court that a government rental assistance program has approved an application for rental assistance, corresponding to all or part of the rental debt demanded in an unlawful detainer complaint. The verification must be submitted before the property is restored to the landlord. In the case of partial rental assistance, the tenant must make the additional payments necessary to satisfy the full amount of rental debt demanded in the complaint. If, after a hearing, the court determines that the necessary conditions have been met, then it must grant the tenant's application for relief, set aside any judgment in the case, and dismiss the case.
- 18) Sunsets the provisions of the COVID-19 Rental Housing Recovery Act effective September 30, 2024.
- 19) Includes a severability clause.
- 20) Contains an urgency clause. States that the facts constituting the necessity are to address the hardships imposed by the COVID-19 pandemic on tenants and landlords in California as soon as possible.

EXISTING LAW:

- 1) Specifies that, unless covered by the COVID-19 Tenant Relief Act of 2020, a tenant is guilty of an unlawful detainer and subject to a court-ordered eviction if the tenant does not vacate the rental property or pay rent within three court days of a demand to do so. (Code of Civil Procedure Section 1161 (2). All further statutory references are to the Code of Civil Procedure, unless otherwise indicated)
- 2) Establishes the COVID-19 Tenant Relief Act of 2020 and provides temporary protections for residential tenants and mobilehome park residents facing COVID-19 financial distress through June 30, 2021. (Section 1179.01 *et seq.*)
- 3) Defines the following terms under the COVID-19 Tenant Relief Act of 2020:
 - a) "Covered time period" means the time between March 1, 2020, and June 30, 2021. (Section 1179.02 (a).)

- b) "COVID-19-related financial distress" means a qualifying loss of income, increase in expenses, caretaking responsibilities, or other specified circumstances caused by the COVID-19 pandemic. (Section 1179.02 (b).)
 - c) "COVID-19 rental debt" means unpaid rent or other unpaid financial obligations under the tenancy that came due during the covered time period. (Section 1179.02 (c).)
 - d) "Declaration of COVID-19-related financial distress" means a written statement that includes specified language and is signed under penalty of perjury. (Section 1179.02 (d).)
 - e) "Landlord" means an owner or agent of residential real property, a residential rental unit, a mobilehome park, or a mobilehome park space or lot. (Section 1179.02 (e).)
 - f) "Protected time period" means the time between March 1, 2020, and August 31, 2020. (Section 1179.02 (f).)
 - g) "Rental payment" means rent or any other financial obligation of a tenant under the tenancy. (Section 1179.02 (g).)
 - h) "Tenant" means any natural person who hires real property except for commercial tenants and certain transient occupancy situations listed in subdivision (b) of Section 1940 of the Civil Code. (Section 1179.02 (h).)
 - i) "Transition time period" means the time period between September 1, 2020, and June 30, 2021. (Section 1179.02 (i).)
- 4) Prohibits tenants who follow specified steps from being evicted for failure to pay rent, first, accrued between March 1, 2020 and August 31, 2020 and, second, accrued between September 1, 2020 and June 30, 2021, if they pay 25% of the amount owed for the latter period by June 30, 2021. Tenants who fail to pay this 25% can be evicted beginning on July 1, 2021. (Section 1179.03 (g)(2)(B).)
 - 5) Requires tenants to follow specified procedures to demonstrate COVID-19 related financial hardship, including providing documentation if they are a "high-income tenant," as defined. (Section 1179.02.5.)
 - 6) Permits landlords to sue tenants for unpaid COVID-19 rental debt in small claims court beginning August 1, 2021. Removes certain limits on small claims jurisdiction to facilitate collection of this debt. (Section 116.223.)
 - 7) Increases, until July 1, 2021, the time that tenants have to respond to a demand to pay rent or other charges from three business days to 15 business days. (Section 1179.03 (b)(1).)
 - 8) Prohibits landlords from retaliating against tenants prior to July 1, 2021 for incurring COVID-19 rental debt. Increases financial liability of landlords who illegally evict tenants. (Civil Code Section 1942.5.)
 - 9) Expands the Homeowners Bill of Rights until January 1, 2023 to cover small landlords, as defined. (Civil Code Section 2924.15.)
 - 10) Restricts public access to court files for eviction cases based on non-payment of rent filed between March 1, 2020 and June 30, 2021. (Section 1161.2.)

- 11) Clarifies the interaction between state COVID-19 eviction protections and any related local ordinances. (Section 1179.05.)
- 12) Requires the executive branch to engage with stakeholders about how to spend any future federal stimulus funding on housing stabilization. (AB 3088 (Chiu, Chap. 37, Stats. 2020), Section 21.)
- 13) Authorizes the court to, in its discretion, relieve a tenant from forfeiture of a lease or rental agreement at any time before rental property is restored to the landlord. (Section 1179.)
- 14) Specifies that a housing provider, tenant screening company, or other entity that evaluates tenants on behalf of a housing provider shall not use an alleged COVID-19 rental debt as a negative factor for the purpose of evaluating a prospective housing application or as the basis for refusing to rent a dwelling unit to an otherwise qualified prospective tenant. (Civil Code Section 1785.20.4.)
- 15) Appropriates through the federal Department of the Treasury a combined \$46.55 billion in emergency rental assistance funds to states, territories, tribes, and local governments with at least 200,000 in population as follows:
 - a) \$25 billion through Section 501 of Subtitle A of Title V of Division N of the federal Consolidated Appropriations Act, 2021. (Public Law 116-260.)
 - b) \$21.55 billion through Section 3201 of the American Rescue Plan Act of 2021. (Public Law 117-2.)
- 16) Requires the Secretary of the Treasury, in consultation with the Secretary of Housing and Urban Development, to provide public reports at least quarterly on the use of rental assistance funds. (Public Law 116-260.)
- 17) Establishes the State Rental Assistance Program for the provision of rental assistance funds in response to the COVID-19 pandemic. (Health and Safety Code Sections 50897 – 50897.6.)
- 18) Requires HCD to submit to the Joint Legislative Budget Committee, on a monthly basis for the duration of the rental assistance program, a report that provides programmatic performance metrics, including:
 - a) Obligation of funds for assistance;
 - b) Expenditure of funds for assistance;
 - c) Expenditure by eligible uses for assistance;
 - d) Reallocation of funds, if any, for assistance; and
 - e) Geographic distribution of funds provided. (Health and Safety Code Section 50897.4.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Since mid-March of 2020, the COVID-19 crisis has necessitated a wide range of emergency actions to preserve public health and safety in the state. In order to stop the spread of SARS-CoV-2 and “flatten the curve,” the state imposed closures and reduced capacity requirements in schools, businesses, work places, and other establishments. As a result,

California's unemployment skyrocketed from a record low rate of 3.9% in the first two months of 2020 to a peak of 16% in April of 2020. Renters, low-income workers, and communities of color were all disproportionately impacted by job and income losses that were caused by the pandemic-related closures.

Author's statement. The author writes:

While the economic recovery from the pandemic is already underway, many tenants face ongoing financial hardships that prevent them from being able to pay rent to their landlords. Between May 26 and June 7, 2021, data from the Census Bureau's Household Pulse survey indicate that approximately 1.75 million of California's renter households reported "slight" or "no confidence" in their ability to pay next month's rent. At the same time, the state has received an unprecedented \$5.2 billion in rental assistance funds available to cover missed rent and utility expenses for low-income households (those less than or equal to 80% of Area Median Income). AB 832 extends the state's COVID-19 eviction protections through September 30, 2021 to allow additional time for rental assistance funds to be distributed. It also increases payments from the state's rental assistance program to fully cover 100% of a tenant's missed rent by eliminating the current requirement for landlords to forgive 20% in order receive payment for the remaining 80%. Finally, following the expiration of eviction protection on September 30, 2021, the bill provides six additional months of procedural safeguards to pause evictions in cases where tenants need additional time to access rental assistance funds. With SB 91 eviction protections set to expire on June 30th, the state must make sure that it's doing everything it can to promote a just, equitable recovery that gives struggling renters a fair chance to get back on their feet.

Background on California's COVID-19 Eviction Protections. In recognition of the dual public health and economic crises, the state has enacted a series of eviction protection measures to keep tenants housed during the pandemic. On April 6, 2020, the Judicial Council adopted Emergency Rule 1, which halted nearly all unlawful detainer (eviction) proceedings for residential and commercial tenancies. After the Judicial Council announced plans to repeal Emergency Rule 1, the Legislature then enacted AB 3088 (Chiu et al., Chap. 37, Stats. 2020) as an urgency measure in August of 2020. That bill created a statutory framework for COVID-19 eviction protections for residential renters and mobilehome owners facing economic hardships.

AB 3088 Framework. AB 3088 provided a simple method for tenants experiencing financial hardship due to the COVID-19 pandemic to receive protections from eviction due to their inability to pay rent or other money owed to their landlord. The bill did not relieve tenants of their responsibility to pay rent or any other financial obligations under their rental agreements. Instead, it provided extra time for payments to be made and removed the threat of eviction if tenants paid at least a portion of their rent by a certain date. Though initial protections under AB 3088 lasted through January 31, 2021, an extension until June 30, 2021 was enacted with the passage of SB 91 in January of this year (Committee on Budget and Fiscal Review, Chap. 2, Stats. 2021).

Under the eviction protections provided in AB 3088 and subsequently extended through SB 91, landlords are required to serve a special notice to tenants who miss rent payments. Tenants then have 15 business days to do one of the following: pay the demanded amount, vacate the premises, or return a declaration to the landlord, signed under penalty of perjury, indicating that the tenant cannot pay the demanded amount because of a COVID-19-related financial hardship.

What constitutes a COVID-19 related financial hardship must be included in the text of the 15-day “pay or quit” notice along with a blank copy of the declaration form. If the tenant returns the signed declaration of COVID-19 related financial hardship to the landlord within 15 business days, then the tenant receives protection against eviction.

How long that protection lasts for a tenant who complies with the AB 3088/SB 91 process depends on when the unpaid rent and other charges (“COVID-19 rental debt”) accrue. The first five months of the pandemic, from March 1, 2020 to August 31, 2020 are designated under AB 3088 as the “protected time period” during which tenants who attest to COVID-19 hardship cannot be evicted based on failure to pay rent during the protected time period. Landlords can still recover rent owed to them by tenants, however, if the landlord brings a case against a tenant in small claims court or as a civil case. For missed rent between September 1, 2020 and June 30, 2021, deemed the “transition time period” under AB 3088 and SB 91, tenants must pay 25% of any missed rent that becomes due during that period no later than June 30, 2021 in order to get protection from evictions. Any remaining unpaid rent for the transition period is still owed to the landlord who can use the small claims process to recover missed rent from either the protected time period or the transition time period beginning August 1, 2021.

Proposed Extension of COVID-19 Eviction Protections. This bill proposes to extend the transition time period’s end date from June 30, 2021 to September 30, 2021. Existing protections currently run through June 30, 2021; this bill would therefore give tenants an additional three months of eviction protection. If signed into law, tenants would have until September 30, 2021 to pay 25% of any missed rent or other financial obligations under the rental agreement which accrued between September 1, 2020 and September 30, 2021. Additionally, this bill makes conforming changes to extend other provisions enacted through AB 3088 and SB 91, including: a prohibition on adding late fees to missed rent, increased fines for landlord harassment and retaliation, and protections against the sale or assignment of COVID-19 rental debt.

Rental Assistance Programs under SB 91. While non-payment eviction protections have kept California tenants from being displaced during the pandemic, many renters who fell behind on rent now owe thousands of dollars in rent debt. For low-income renters who were already struggling to afford housing prior to the pandemic, repaying many months of rent will prove to be incredibly challenging, if not impossible. Additionally, some property owners have now gone nearly 15 months without receiving rent payments from their tenants while still facing ongoing costs related to mortgages, taxes, and maintenance. Without financial assistance, both renters and landlords who lost income during the pandemic face an uncertain financial future.

In recognition of the economic challenges facing low-income renters and their landlords, between late 2020 and early 2021, the federal government set aside over \$46.55 billion in emergency rental assistance and utility assistance funding. States and eligible local governments with populations of at least 200,000 can receive funds directly from the Department of the Treasury and are then tasked with running rental assistance programs to distribute funds to eligible tenants and their landlords.

Across both rounds of federal funds provided to date, California is expected to receive a total of at least \$5.2 billion for rent and utility assistance. The federal rules dictate that rental assistance funds can be used to pay past due rent, future rent payments, certain utility payments, and other housing expenses for low-income tenant households that make no more than 80% of area median income (AMI). Additionally, in order to receive assistance, a renter household must have

qualified for unemployment benefits or experienced financial hardships related to the COVID-19 pandemic.

California created a framework for distributing the state's share of rental assistance funds with the passage of SB 91. As part of that legislation, the Department of Housing and Community Development (HCD) was tasked with administering state funds and working with locals to coordinate rental assistance efforts. Under SB 91, three different types of rental assistance programs were authorized based on (1) whether a jurisdiction received direct federal money and (2) whether the city or county opted to follow the state's SB 91 formulas or run its own independent program. These three administrative options for California rental assistance programs are as follows:

1. Option A – State-Administered Rental Assistance Program: Cities and counties with populations of less than 200,000 that were ineligible to receive direct federal money may have their share of funds administered by the state's rental assistance program. Option A jurisdictions also include cities and counties that were able to receive funds from the Treasury, but declined to receive those direct payments. In HCD's report to the Joint Legislative Budget Committee on the rental assistance program, it notes that these Option A jurisdictions include 29 counties and two large cities that together comprise approximately 31% of the state's population.

2. Option B – Locally-Administered Rental Assistance Programs: These jurisdictions received rental assistance funds directly from the Treasury, but elected to run a separate program using the same overall payment structure and policies as the state program uses for Option A jurisdictions. The state then provides these cities and counties with their proportional share of funds based on the jurisdiction's population as a state block grant. Instead of applying for rental assistance to the state program, landlords and tenants in Option B areas would apply directly to the local program. Option B consists of 12 cities and 10 counties.

3. Option C – Dual Implementation: SB 91 provided jurisdictions with populations over 200,000 the option to distribute their rental assistance program under federal rules, but remain independent from the state rules and guidance provided in SB 91. A total of 16 jurisdictions (nine counties and seven cities) elected to administer rental assistance funds under Option C. In Option C jurisdictions, the city's or county's share of money that went to the state is still administered through HCD's program in the same manner as Option A jurisdictions. However, HCD and Option C governments coordinate responsibility for different population segments or timeframes to ensure that landlords and tenants are not able to "double dip" and receive payments from both programs.

For Option A and Option B jurisdictions that follow the SB 91 formulas and policies, rental assistance programs currently provide landlords with 80% of the rent payments missed by eligible tenants between April 1, 2020 and March 31, 2021. In order for landlords to receive payments from the rental assistance program, they must agree to forgive the remaining 20% of a tenant's rental debt from that time period. In situations where landlords are unwilling to apply for rental assistance, tenants can receive 25% of their rental debt for those months. Additionally, all eligible tenants can also receive 25% of each month's rent for rent owed between April 1, 2021 and June 30, 2021 ("prospective rent"). Currently, state law does not specify how rental assistance payments are made on or after July 1, 2021; this bill would fill that gap.

While the state-administered rental assistance program opened on March 15, 2021, there have been a number of challenges with the program getting funds out to eligible landlords and tenants.

Many Option C programs opened in April or even late May of this year and payments to those jurisdictions were delayed due to their later start dates. Tenant advocates have called for an extension of SB 91's eviction protections to allow for additional time to distribute rental assistance funds to eligible households. Additionally, both property owners and tenant groups have requested changes to the assistance formulas that are used to calculate rent payments.

If SB 91 expires and an additional extension of eviction protections is not put into place, many tenants who are eligible for rental assistance could face eviction within days, despite being eligible for funds that could cover their missed rent. *Additionally, if California is successful in spending down its rental assistance funds over the next several months, both the state and local governments stand to receive significant additional federal funds that could provide a vital lifeline to low-income renter households for many months or even years ahead.* That is due to the fact that the federal statutes that authorize rental assistance funds also include spending targets and "clawback" mechanisms for jurisdictions that fail to meet those targets.

If a state or local government fails to meet its spending target, the Treasury then could recoup unused funds up to that spending target and redistribute them to jurisdictions that met the required targets on time. Since the original distribution of federal rental assistance funds is primarily based on each state or local government's share of the national population, states with a lower share of renters, or with lower housing costs, are unlikely to be able to spend down their funds as quickly as California can. Not only does California have an above-average proportion of renters relative to other states, it also has some of the nation's highest rental costs. As such, if the state and local governments can meet the spending target dates in federal law, California stands to receive millions, if not billions, in additional rental assistance funds.

Though total assistance to a given renter household is capped at 18 months, the state's existing shortage of affordable housing for low-income renters means that there is likely to be significant demand for rental assistance funds for the foreseeable future as new households experience economic challenges. And while COVID-19 economic hardships are likely to decline as the pandemic wanes, as noted above, rental assistance funds can also be provided to eligible households that qualify for unemployment benefits. Additional funds could help stabilize low-income renters for several years because Treasury guidance specifies that the second round of funds can be used through September 30, 2025. *However, in order for California to be in the best possible position itself to receive future rental assistance funds, it will be crucial to set up rental assistance and eviction protections to facilitate quick deployment of the state's current rental assistance resources.*

Proposed Expansion of the State's Rental Assistance Program: Given that timely distribution of rental assistance funds can provide crucial support to renters and property owners who have faced financial setbacks during COVID-19 crisis, this bill seeks to make a number of changes to the rental assistance program going forward. In general, AB 832 would increase payment levels and broaden the eligibility criteria to reach additional households that have been left out of the original SB 91 rental assistance program. All rental assistance programs would still be required to follow applicable federal rules on income eligibility, reporting, and categories of payment allowed. However, this bill would implement the following changes to the state's rental assistance framework:

1. Eliminating the requirement for landlords to accept an 80% payment of rent debt while forgiving 20% of rent debt. Instead, payments from the rental assistance program would be

set to equal 100% of a household's missed rent. Applicants who have already applied and received assistance would automatically receive additional 20% payments to bring their total assistance to 100% of their missed rent.

2. Allowing 100% coverage of tenant rent debt in situations where a landlord refuses to apply. Currently, tenants can only receive payments equal to 25% of their missed rent if their landlord refuses to apply. This bill would expand these "direct-to-tenant" payments to 100% of missed rent and would require tenants to provide payments to landlords within 15 business days. Failure to provide payments to landlords during that time period would result in landlords being able to assess a penalty equal to the amount charged to a tenant for a missed rent payment.
3. Permitting jurisdictions with at least 200,000 in population to switch between the different administrative options (e.g., Option A, Option B, and Option C) for rental assistance funds provided in the second round of federal assistance.
4. Allowing rental assistance payments to be provided to cover rent debt for situations where a tenancy has already ended.
5. Requiring all rental assistance programs to, by September 15, 2021, add in the capacity to report specified information to the courts, landlords, and tenants.
6. Indemnifying the state rental assistance program and related entities from liability related to duplication of benefits.

Evictions During the "Recovery Period" from October 1, 2021 - March 31, 2022. Under this bill, after September 30, 2021, landlords will no longer be prohibited from seeking to evict tenants for nonpayment of rent, even if tenants attest to experiencing continued COVID-19 financial distress.

Instead, during the recovery time period, which lasts from October 1, 2021 to March 31, 2022, a landlord would be able to use the unlawful detainer process to evict a residential tenant who has not paid their rent by taking the following steps. (Note that these procedures do not apply to tenants whose tenancies began after September 30, 2021.)

1. First, the landlord provides the tenant with the appropriate demand to pay rent or vacate:
 - a. If the landlord seeks to evict the tenant because of unpaid rent (or another financial obligation under the rental agreement) that came due between March 1, 2020 and September 30, 2021, the landlord serves the tenant with a notice to pay rent or vacate that conforms to the requirements of the COVID-19 Tenant Relief Act, as amended by this bill.
 - b. If the landlord seeks to collect unpaid rent (or another financial obligation under the rental agreement) that came due between October 1, 2021 and March 31, 2022, the landlord serves the tenant with a notice to pay rent or vacate that conforms to the requirements of the COVID-19 Rental Housing Recovery Act. (Those requirements are briefly described in paragraph 11) under **Summary** above.)

If the tenant pays the demanded amount or vacates within the time given, then the landlord need take no further action. If the tenant neither pays nor vacates, then the landlord would proceed to the next step.

2. Second, the landlord submits a complete application for government rental assistance to the program that provides rental assistance for the city, county, or city and county in which the rental unit is located.
3. Third, the landlord files a complaint for unlawful detainer (eviction) against the tenant in court. The court must determine whether to issue a summons, which will allow the case to proceed. As recently described by the California Supreme Court: “The summons provides the defendant notice that the action described in the accompanying complaint has been filed against them in court. A valid summons must contain information such as the title of the court in which the action is pending, the names of the parties, and a direction that the defendant file a response to the complaint within [three court days] after the summons is served.” (*Stancil v. Superior Court* (2021) 11 Cal. 5th 381, 392.)

The court will issue a summons once either of the following conditions is met:

- a. The landlord has obtained a final decision from the pertinent government rental assistance program denying rental assistance for one of the following reasons: i. the tenant is not eligible for rental assistance, ii. the rental assistance program no longer has sufficient funds to approve the application, or iii. 15 days have passed since the landlord submitted a properly-completed application for rental assistance, and the tenant has not completed the portion of the application that is the tenant’s responsibility.
- b. The landlord files a statement under penalty of perjury that all of the following are true:
 - i. Before filing, the landlord completed an application for government rental assistance to cover the unpaid amounts.
 - ii. 20 days have passed since the later of the date the landlord submitted the application or the date on which the landlord served the tenant with a notice to pay rent or vacate.
 - iii. The landlord has not received any information that the tenant has completed an application for rental assistance.

Given that the aim of this bill is to make landlords financially whole while keeping tenants housed, this step, which is meant to ensure that no summons issues unless a landlord has properly filed a rental assistance application, is crucial. Being served with a summons often intimidates tenants into vacating their homes because they are afraid to be involved with the legal system in any way, a fear that is particularly acute among communities of color and immigrant communities.

4. Fourth, the landlord then serves the tenant with the summons, complaint, and the documents the landlord filed with the court to obtain the summons. Once served, the tenant has five court days to file an answer. If the tenant fails to answer, the landlord can ask the court to presume the tenant has no response (termed a “default.”).

5. Fifth, the landlord applies for a judgment for eviction, whether on default, at summary judgment, or after trial. Before it enters judgment, the court must first determine, after reviewing the pleadings and any evidence, that the landlord applied for rental assistance and the application was denied for one of the following reasons: the tenant is not eligible for rental assistance; the rental assistance program no longer has sufficient funds to approve the application; or 15 court days have passed since the landlord submitted a properly-completed application for rental assistance, and the tenant did not complete the portion of the application that was the tenant's responsibility.
6. Finally, once the court issues a judgment for eviction (and assuming it is not stayed under step 7, below), the sheriff will carry out the eviction by locking out the tenant and returning possession of the property to the landlord.
7. There is one final backstop against eviction for nonpayment in situations where rental assistance money is available to ensure the landlord receives full payment. At any time before lockout, a tenant can ask the court to halt the eviction if the tenant obtains approval of an application for assistance with some or all of the rental debt owed.

The tenant makes the request to halt the eviction by filing with the court either a copy of the final decision approving the application, or a property address and unique application number that enables the court to verify that the tenant has been approved. If the tenant makes such a filing, the court must set a hearing on the matter within five to ten days, stay the action if no judgment has yet been entered, and stay any writ of possession issued in the case, along with notifying the sheriff of the stay.

If, at the subsequent hearing, the tenant is able to pay the landlord the money owed, the court must set aside any judgment and dismiss the case. Instead, if, at the subsequent hearing, the court determines that the government rental assistance program had not yet issued its part of the payment, the court will set a follow-up hearing to be held in 15 court days. If the conditions for relief from forfeiture are not fulfilled, the court must dismiss the tenant's application.

This procedure is based on the existing provision for relief from forfeiture (Code of Civil Procedure 1179), which codifies the court's authority to cancel an eviction for nonpayment—if the tenant demonstrates the tenant has come up with the money necessary to make the landlord whole.

The Case for Extended Eviction Protections and a Recovery Period “Backstop”. During the pandemic, tenants have struggled to keep up with rent payments. Between May 26 and June 7 of this year, responses to the Census Bureau's Household Pulse survey indicate that approximately 1.75 million of California's renter households reported “slight” or “no confidence” in their ability to pay the next month's rent. While the economic situation has improved since the early months of the crisis, unemployment rates are still much higher in California than they were right before the start of the pandemic. Additionally, there are significant racial/ethnic disparities in unemployment rates. According to a May 2021 report from the California Budget and Policy Center, “Black and Latinx Californians remain considerably more likely to be out of work. One year into the recession, 15.3% of Black Californians and 13% of Latinx Californians were unemployed... considerably higher than the 9.7% unemployment rate for white Californians and 8.6% rate for Asian Californians.” (Anderson, *California's Recent Job Gains are Promising, but Policy Choices Now Will Determine if an Equitable Economy is Ahead*, available at

<https://calbudgetcenter.org/resources/californias-recent-job-gains-are-promising-but-policy-choices-now-will-determine-if-an-equitable-economy-is-ahead/>.) The same analysis points to the fact that the economic recovery from the pandemic is still ongoing and that, even if the rate of job growth in California continues at the same level, it would take until September 2022 to replace lost jobs and jobs that would have been created without the pandemic.

On the public health front, despite the recent marked improvement in average daily COVID-19 case counts, hospitalizations, and deaths, the virus continues to spread and infect Californians. Unvaccinated populations are especially vulnerable to becoming ill and spreading the virus to others. At this time, we also do not know whether future vaccine “booster” shots will be needed to maintain protection. And, while children are generally less likely to suffer severe cases, many cannot be vaccinated because there are currently no COVID-19 vaccines authorized by the FDA for use in children under 12 years of age. Together, these factors suggest that COVID-19 is not yet fully behind us.

There is also evidence that communities which experience more evictions tend to have lower COVID-19 vaccination rates—meaning that lifting eviction protections prematurely may lead to greater risks of virus transmission in those areas. Specifically, in a June 11, 2021 analysis from the Eviction Lab at Princeton University, researchers “found a pattern of higher eviction filing rates in neighborhoods with lower vaccination rates.” Using data from a number of major U.S. cities, the report further notes, “[A]reas with low levels of immunization may be at particular risk for COVID-19 resurgence, especially given the spread of more-contagious variants. A surge in eviction—which has been associated with COVID-19 transmission, infection, and mortality—would only increase that risk.” (Jin, et al., *Neighborhoods with Highest Eviction Filing Rates have Lowest Levels of COVID-19 Vaccination*, available at <https://evictionlab.org/filing-and-vaccination-rates/>.)

The COVID-19 pandemic, the need to ensure an equitable recovery from the pandemic in a manner that does not exacerbate the state’s longstanding homelessness crisis, and the availability of vast amounts of state and federal aid to make landlords whole are not ordinary circumstances for the State of California and its residents. But with this bill, California has the opportunity to ensure that rental assistance funds will save struggling tenants from staggering COVID-19 rent debts that currently jeopardize the future economic well-being of many renter families. Additionally, by creating a process to ensure that tenants (at least those with tenancies prior to October 1, 2021) are given a fair shot to apply for assistance before they face court-ordered evictions, it is hoped that this legislation will help limit further growth in the state’s homeless population and further spread of the COVID-19 virus.

Committee staff notes that this bill includes provisions related to the jurisdiction of the Assembly Committee on Housing & Community Development. Therefore, consultants from that Committee provided input and content for this analysis.

ARGUMENTS IN SUPPORT: The City of San Diego explains how important this bill is to its residents:

The unprecedented and devastating impacts of the COVID-19 dual health and economic crises have not yet abated. Extending the moratorium is critical to ensure widespread evictions are not experienced by millions of Californians. More than half of San Diego households are renters, many of whom are workers who have been laid off or their jobs eliminated over the past fifteen months. [...] The expansion of financial relief to cover 100%

of unpaid rent will assist millions of Californians by drawing down available federal resources. AB 832 must be passed urgently to ensure vulnerable Californians can remain in their homes.

Prior Related Legislation: AB 1482 (Chiu, Chap. 597, Stats. 2019) limited rent-gouging in California by placing an upper limit on annual rent increases: five percent plus inflation up to a hard cap of 10 percent. To prevent landlords from engaging in rent-gouging by evicting tenants, the bill also required that a landlord have and state a just cause, as specified, in order to evict tenants who have occupied the premises for a year. AB 1482 sunsets after ten years and does not preempt any local rent control ordinances.

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

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

REGISTERED SUPPORT / OPPOSITION:

Support

City of San Diego
Family Violence Appellate Project

Opposition

None on file

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