
UNFINISHED BUSINESS

Bill No: SB 91
Author: Committee on Budget and Fiscal Review
Amended: 1/25/21
Vote: 21

SENATE FLOOR: Not relevant

ASSEMBLY FLOOR: Not available

SUBJECT: COVID-19 relief: tenancy: federal rental assistance

SOURCE: Author

DIGEST: This trailer bill extends the moratorium on evictions for non-payment of rent due to COVID-19 financial hardship, subject to numerous conditions from January 31, 2021, to June 30, 2021. This trailer bill also contains an appropriation of federal funds and statutory changes necessary to implement a rental assistance program as part of the 2020 Budget Act.

Assembly Amendments delete the Senate version of the bill and instead add the current language.

ANALYSIS:

Existing law:

- 1) Codified, pursuant to AB 3088 (Chiu, Chapter 37, Statutes of 2020), a set of temporary measures designed to prevent widespread loss of housing through evictions and foreclosures resulting from the economic impacts of the COVID-19 pandemic. These provisions are set to expire on January 31, 2021.
- 2) Enacted December 27, 2020, the federal Consolidated Appropriations Act, 2021 (Public Law 116-260), included \$25 billion for rental assistance programs, allocated to the states. California is expected to receive roughly \$2.6 billion of

this amount. \$1.1 billion is to be allocated directly to local jurisdictions with populations above 200,000, with the balance allocated to the state for administration.

This bill makes the following statutory changes:

Extension of the Eviction Moratorium. This bill extends the eviction moratorium provisions established by AB 3088 (Chapter 37, Statutes of 2020), until June 30, 2021. It also makes conforming date extensions to rental protections provisions included throughout AB 3088. Most importantly, it maintains the protection against eviction for tenants who pay at least 25% of their owed rent, either in the form of 25 percent of monthly rent paid each month; or a lump sum payment by June 30, 2021, that brings the total paid to 25 percent of what is due, over the period covered. It also extends preemptions that prevent locals from changing local eviction rules beyond what was in place on August 19, 2020.

State Rental Assistance Program. This bill establishes the State Rental Assistance Program to allocate the state share of federal rental assistance funds. This bill structures the program as follows:

- 1) *Allocation of Funding:* Funds will be allocated as based on population, consistent with the requirements of federal law, as follows:
 - a) Provides a \$150 million set aside for counties with populations under 200,000. This funding is allocated proportionally based on population.
 - b) Distributes the remaining funds to counties and cities with populations over 200,000 who are eligible to also receive a direct allocation from the federal government.

This bill stipulates that localities with a population greater than 500,000 shall receive their funding as a block grant from the state, to be implemented locally. Those localities with a population between 200,000 and 500,000 are eligible to receive their funding as a block grant from the state. This bill prohibits a locality that receives funds in this manner from instituting additional programmatic requirements that may inhibit participation in the rental assistance program, and requires any locality that receives a block grant pursuant to this bill to attest to the department that it will distribute assistance equitably and consistent with demonstrated need within the jurisdiction. It requires an applicant to agree to utilize direct allocation assistance from the federal government in a manner consistent with the state Rental Assistance

Program, and requires that applicants that refuse to do so shall be prohibited from receiving state block grant funds.

This bill requires that the initial allocation of funds described above be completed and shared no later than February 19, 2021, by the Department of Housing and Community Development (HCD), in consultation with the Department of Finance. It also requires that locals shall request the block grants by February 12, 2021; shall contractually obligate at least 65 percent of those funds by June 1, 2021; and shall fully expend those funds by August 1, 2021. This bill requires localities that fail to meet these deadlines to return unused funds to the department for reallocation.

Localities with populations below 200,000, or those who opted to not receive their funds as a block grant from the state, would receive their allocation of funding as administered by a statewide program implementer, as described below.

- 2) *Program Implementer Requirements:* This bill permits HCD to contract with a vendor to serve as the program implementer to manage and fund services to distribute emergency rental assistance resources. It requires the program implementer to meet the following requirements:
 - a) Requires the program implementer to have existing relationships with community-level partners to ensure all regional geographies and target communities throughout the state have access.
 - b) Requires the program implementer to demonstrate experience developing and managing direct payment or grant programs, or direct payment and grant programs.
 - c) Requires the program implementer to develop and implement a central technology-driven application portal and system that serves landlords and tenants, has mobile and multi-language capabilities, and allows an applicant to track the status of their application. Requires the application system to have the capacity to handle the volume of expected use without disruption.
 - d) Requires the program implementer to be able to manage a technology driven duplication of benefits process in compliance with federal law, to comply with all state protections related to personally identifiable information, and coordinate its program activities with education and outreach contractors and any affiliated service or technical assistance providers.

- e) Requires the system to begin accepting applications for rental assistance no later than March 15, 2021, and be available 24 hours a day, seven days a week, with 99 percent planned uptime rating.
- f) Requires the system to support, at a minimum, a database of one million application records.
- g) Requires the system to support at minimum 20,000 concurrent full-access users.
- h) Includes specified program interface requirements.

This bill allows HCD to establish a contract with an education and outreach contractor to conduct a multilingual statewide campaign to promote program participation and accessibility, and requires the department to seek contracted solutions (for both program implementer and outreach coordinator) that minimize total administrative costs so that savings can be reallocated to direct assistance. To this end, it also allows the department to receive rental assistance program funding from localities or federally-recognized tribes to administer on their behalf.

- 3) *Program Prioritization*: This bill provides that localities, the department and, if applicable, the program implementer shall prioritize communities disproportionately impacted by COVID-19, as determined by the department. State prioritization shall be structured as follows:
 - a) Round 1: Eligible households as specified in federal law, to expressly target assistance for eligible households under 50 percent area median income.
 - b) Round 2: Communities disproportionately impacted by COVID-19, as determined by the department.
 - c) Round 3: Eligible households not otherwise prioritized in Round 1 or 2, to expressly include eligible households under 80 percent area median income.
- 4) *Eligible Uses*: This bill prescribes eligible uses for funds made available to a locality or a grantee as follows:
 - a) Rental arrears.
 - b) Prospective rent payments.
 - c) Utilities, including arrears and prospective payments for utilities.

- d) Any other expense related to housing as provided in the authorizing federal law.

This bill requires priority to be given to rental arrears to stabilize households and prevent evictions. Permits the use of the remaining funds for prospective rental payments and utility payments, including arrears and prospective payments. It requires that funds used for prospective rent payments for an eligible household not exceed 25 percent of the eligible household's monthly rent.

- 5) *Landlord participation:* This bill assistance for rental arrears is limited to 80 percent of a household's unpaid rental debt accumulated from April 1, 2020, to March 31, 2021, conditioned upon the landlord's agreement to forgive the remaining rental debt owed by any tenant within the eligible household for whom rental assistance is being provided. It provides that the landlord's agreement to accept payment in full, shall include the landlord's agreement to release any and all claims for nonpayment or rental debt owed for the specified time period.
- 6) *Landlord non-participation:* This bill allows funding to reach renters if landlords refuse to participate in the program. It allows a member of an eligible household to apply for rental arrears assistance directly from a grantee or from the program implementer if a landlord refuses to participate in rental assistance program for the payment of rental arrears. In this case, this bill limits assistance for rental arrears 25 percent of the eligible household's unpaid rental debt accumulated from April 1, 2020, to March 31, 2021, inclusive.
- 7) *Other Provisions:* Additional provisions of the Rental Assistance Program include:
 - a) Exempts from income, any assistance provided, for purposes of Personal Income Tax or used to determine eligibility for an eligible household, or any member of an eligible household, for any state program or local program financed wholly or in part by state funds.
 - b) Provides that for taxable years beginning on or after January 1, 2020, and before January 1, 2025, gross income shall not include a tenant's rent liability that is forgiven by a landlord.
 - c) Provides authority for the department to adopt, amend or repeal rules, guidelines, or procedures to carry out the rental assistance program.

- d) Requires a notification from the Department of Finance to the Joint Legislative Budget Committee to deploy additional federal rental assistance resources to this program.
 - e) Provides that the provisions of this act are severable.
- 8) *Definitions:* This bill includes various definitions including, but not limited to, the following:
- a) Defines “grantee” to mean a locality or federally recognized tribe that participates in a rental assistance program.
 - b) Defines “program implementer” as the contracted vendor selected to administer emergency rental assistance under the program pursuant to paragraph (1) of subdivision (a) of Section 50897.3 of this bill.
 - c) Defines “rental arrears” as eligible for financial assistance pursuant to Section 501(c)(2)(A) of Subtitle A of Title V of Division N of the federal Consolidated Appropriations Act, 2021 (Public Law 116-260).
 - d) Defines “reservation pool” as the amount of program funds set aside for a select geographic area.
 - e) Defines “State reservation table” as the methodology of distributing the state portion of funding received from Subtitle A of Title V of Division N of the federal Consolidated Appropriations Act, 2021 (Public Law 116-260) and specifies allocation.
 - f) Defines “utilities” as utilities and home energy costs eligible for financial assistance pursuant to Section 501(c)(2)(A) of Subtitle A of Title V of Division N of the federal Consolidated Appropriations Act, 2021 (Public Law 116-260).

Civil Court and Unlimited Civil Court. This bill imposes a moratorium on actions seeking to recover COVID-19 rental debt until July 1, 2021. It requires a landlord seeking to recover COVID-19 rental debt to provide documentation that the landlord has made a good faith effort to cooperate with a tenant in obtaining rental assistance. It also allows a court to limit attorney’s fees in COVID-19 rental debt cases, and prohibits a housing provider from using COVID-19 rental debt as a negative factor in evaluating a tenant’s suitability.

Other Provisions. This bill requires the department to submit a report that provides programmatic performance metrics for funds administered to the Joint Legislative

Budget Committee on a monthly basis for the duration of the program. It also includes intent language that the state closely monitor the usage of funding to ensure that the program is stabilizing households and preventing evictions. This bill provides that the provisions of this act are severable, and that no state reimbursement to local agencies and school districts is required. It also declares that this bill is to take effect immediately and is a bill providing an appropriation related to the budget.

Comments

This bill is a budget trailer bill within the overall 2020-21 Budget package necessary to implement actions related to the eviction moratorium.

In response to COVID-19, the state and federal governments took important steps to stabilize family incomes and protect renters from eviction and homeowners from foreclosure. While this has prevented a wave of evictions, it has led to the growth of rental arrearages across the state, as tenants may remain housed yet continue to owe their landlords back rent. Earlier analyses have estimated the amount of rental arrears in the billions, though the Legislative Analyst's Office has recently estimated that it could be roughly \$400 million.

While the development and distribution of effective vaccines is encouraging, it is clear that the state will be dealing with the effects of the crisis for months to come. However, many of the protections included in AB 3088 are set to expire at the end of January. As such, extending these protections is an important policy action. The distribution of federal funds through the Rental Assistance Program envisioned in this bill is also important in responding to the growing rental arrearages across the state.

However, there are a number of potential issues that the Legislature should consider as they continue to address the subject of rental assistance and protection. Many of these are related to requirements in the authorizing federal law. For example, federal law relies on landlord participation to properly distribute the rental assistance, potentially creating risks for tenants with uncooperative landlords. Although it may be legally difficult to compel participation, the bill does create strong incentives for landlords to participate by providing a high reimbursement rate while also allowing courts to reduce rental debt damages in legal actions where the landlord refused to participate in the state program when the tenant qualified for the state program. Federal law also requires states to focus on those below 80 percent of the area median income (AMI), with emphasis on those below 50 percent AMI. While there are excellent reasons for these

requirements, particularly given the high level of need among those with very low income, they may create gaps in assistance for other populations.

Because these issues are driven by federal requirements, the state is limited in its ability to address them within this federally-funded program. In addition to advocating for changes to these requirements, to the extent that state funding becomes available for additional rental assistance, the Legislature may want to consider targeting it to those populations that either are not eligible or who may require additional rental support, above and beyond that which is provided here.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

According to the Senate Budget and Fiscal Review Committee, this bill appropriates \$1.5 billion from the Federal Trust Fund to HCD for purposes of implementing the Rental Assistance Program. It provides that the amount appropriated may be adjusted in accordance with additional funding the state receives for Rental Assistance Program. It also provides that up to 10 percent of funds appropriated may be expended for the costs to administer the Rental Assistance Program.

SUPPORT: (Verified 1/26/21)

None received

OPPOSITION: (Verified 1/26/21)

None received

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1/28/21 8:45:41

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