

SENATE THIRD READING
SB 91 (Skinner)
As Amended January 25, 2021

SUMMARY:

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 contains changes necessary to implement the 2020 Budget Act. Specifically, this bill:

Major Provisions

Eviction Moratorium Extension

- 1) Extends the eviction moratorium provisions established by AB 3088 (Chapter 37, Statutes of 2020), until June 30, 2021 and covers the following:
 - a) Tenants who pay 25 percent of monthly rent receive eviction protections. The 25 percent can take the form of a 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.
 - b) Preemptions on local jurisdictions are extended. The preemptions prevent locals from changing local eviction rules beyond what was in place on August 19, 2020.
- 2) Makes conforming date extensions to rental protections provisions included throughout AB 3088.

State Rental Assistance Program

- 3) Establishes the State Rental Assistance Program to allocate the state share of federal rental assistance fund. The bill structure is as follows:
 - a) **Allocation of Funding.** Proscribes that funds be allocated as based on population, consistent with the requirements of federal law, as follows:
 - i) Provides a \$150M set aside for counties with populations under 200,000. This funding is allocated proportionally based on population.
 - ii) Distributes the remaining funds to counties and cities with populations over 200,000 who received a direct allocation from the federal government.
 - b) Provides that a locality that has a population of 500,000 or greater shall be eligible to receive a block grant allocation from the department.
 - c) Provides that a locality with a population of 499,999 or less, but greater than 200,000 may request an allocation of a block grant, in a form and manner prescribed by the department.
 - d) Provides that a locality that is not eligible, or does not receive an allocation of block grant funds shall receive its proportionate share of funds in accordance with the reservation table.

- e) Requires any locality that receives a block grant pursuant to Section 50897.2 to attest to the department that it will distribute assistance equitably and consistent with demonstrated need within the jurisdiction.
- f) Requires a locality, if they receive block grant, to agree to utilize their block grant and direct allocation assistance in a manner consistent with the Rental Assistance Program.
- g) Prohibits a locality that receives funds from instituting additional programmatic requirements that may inhibit participation in the rental assistance program.
- h) Allows a locality to apply for assistance through an authorized representative, without its legislative body expressly adopting an ordinance or resolution, provided that it later authorizes a representative of the eligible grantee with legal authority before executing the agreement with the department.
 - i) Requires that the initial allocation of funds be completed and shared no later than February 19, 2021, by the department in consultation with the Department of Finance.
 - j) Provides specified deadlines for the allocation and use of block grant funds and repayment of any unallocated funds.
- k) Provides 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.
- l) **Program Implementer Requirements:** Permits the department to contract with a vendor to serve as the program implementer to manage and fund services to distribute emergency rental assistance resources.
- m) 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.
- n) Includes various requirements for the program implementer including:
 - i) Requiring 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.
 - ii) Requiring the system to begin accepting applications no later than March 15, 2021, and be available 24 hours a day, seven days a week, with 99 percent planned uptime rating.
 - iii) Requiring the system to support, at a minimum, a database of 1 million application records.
 - iv) Requiring the system to support at minimum 20,000 concurrent full-access users.
- o) Requires the program implementer to demonstrate experience developing and managing direct payment or grant programs, or direct payment and grant programs.

- p) Includes specified program interface requirements.
- q) 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.
- r) Allows the department to establish a contract with an education and outreach contractor to conduct a multilingual statewide campaign to promote program participation and accessibility.
- s) Requires the department to seek contracted solutions that minimize total administrative costs so that savings can be reallocated to direct assistance.
- t) Allows the department to receive rental assistance program funding from localities or federally-recognized tribes to administer on their behalf.
- u) **Program Prioritization.** Provides that in addition to providing assistance pursuant to this chapter, 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:
 - i) Round 1: Eligible households as specified in Division N Title V of the federal Consolidated Appropriations Act of 2021 §501(c)(4), to expressly target assistance for eligible households under 50 percent area median income.
 - ii) Round 2: Communities Disproportionately impacted by COVID-19, as determined by the Department.
 - iii) Round 3: Eligible households not otherwise prioritized in Round 1 or 2, to expressly include eligible households under 80 percent area median income.
- v) **Eligible Uses.** Prescribes eligible uses for funds made available to a grantee under this chapter as follows:
 - i) Rental arrears
 - ii) Prospective rent payments
 - iii) Utilities, including arrears and prospective payments for utilities
 - iv) Any other expense related to housing as provided in 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).
- w) 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.
- x) **Landlord participation.** Provides assistance for rental arrears to be 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 accept the payment in full of the rental debt owed by any tenant within the eligible household for whom rental assistance is being provided.

- y) 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.
- z) **Landlord non-participation.** Allows a member of an eligible household to apply for rental arrears assistance from a grantee, if a landlord refuses to participate in rental assistance program for the payment of rental arrears. Provides that assistance for rental arrears shall be limited to compensation of 25 percent of the eligible household's unpaid rental debt accumulated from April 1, 2020, to March 31, 2021, inclusive.
 - aa) Requires funds used for prospective rent payments for an eligible household not to exceed 25 percent of the eligible household's monthly rent.
 - bb) **Definitions.** Includes various definitions including, but not limited to the following:
 - i) Defines "grantee" to mean a locality or federally recognized tribe that participates in a rental assistance program.
 - ii) 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.
 - iii) 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).
 - iv) Defines "reservation pool" as the amount of program funds set aside for a select geographic area.
 - v) 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.
 - vi) 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).
 - cc) **Other Provisions included in the State Rental Assistance Program.** Exempts from income, any assistance provided to tenants, 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.
 - dd) 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.
 - ee) Provides authority for the department to adopt, amend or repeal rules, guidelines, or procedures to carry out the rental assistance program.
 - ff) Requires notifications from the Department of Finance to the Joint Legislative Budget Committee to deploy additional federal rental assistance resources to this program.

Actions to Recover COVID-19 Rental Debt and other protections

- 4) Prohibits a housing provider, tenant screening company, or other entity that evaluates tenants on behalf of a housing provider from using 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.
- 5) Prevents a landlord from selling or assigning unpaid COVID-19 rental debt, for the time period between March 1, 2020, and June 30, 2021. This provision shall only be in effect until July 1, 2021.
- 6) Prevents a landlord from selling or assigning unpaid COVID-19 rental debt, for the time period between March 1, 2020, and June 30, 2021 for any person would have qualified under the rental assistance funding and where the household income is at or below 80 percent of the area median for calendar year 2020
- 7) Prohibits late fees on COVID -19 rental debt through June 30, 2021.
- 8) Requires a plaintiff in an action seeking recovery of COVID-19 rental debt, to attach to the complaint documentation showing that the plaintiff has made a good faith effort to investigate whether governmental rental assistance is available to the tenant, seek governmental rental assistance for the tenant or cooperate with the tenant's efforts to obtain rental assistance from any governmental entity or third party.
- 9) Provides that in an action seeking recovery of COVID-19 rental debt, the court may reduce the damages awarded for any amount of COVID-19 rental debt, sought if the court determines that the landlord refused to obtain rental assistance from the state rental assistance program, if the tenant met the eligibility requirements and funding was available.
- 10) Provides that the provision relating to the reduction of damages does not apply to any jurisdiction that received a direct allocation of assistance and did not accept a block grant.
- 11) Provides that an action to recover rental debt shall not be commenced before July 1, 2021.
- 12) States that Section 871.10 shall not apply to an action to recover COVID-19 rental debts pending before the court as of the operative date of this section.
- 13) Provides that except as otherwise provided in Section 871.10, any action to recover COVID-19 rental debt, that is subject to Section 871.10 and is pending before the court as of the operative date shall be stayed until July 1, 2021.
- 14) Provides that Section 871.10 shall not apply to any unlawful detainer action to recover possession pursuant to Section 1161.
- 15) Provides that an action for breach of contract to recover rental debt that were filed before October 1, 2020, shall not be stayed and may proceed, except that this subdivision shall not apply to actions filed against any person who would have qualified under the rental assistance funding and where the person's household income is at or below 80 percent of the area median income for the 2020 calendar year.

- 16) Prohibits a landlord from applying a security deposit to satisfy COVID-19 rental debt, or applying a monthly rent payment to any COVID-19 rental debt other than the prospective month's rent, unless the tenant agrees in writing to allow the landlord to apply that security deposit or monthly rent payment in that manner for the duration of any tenancy that existed between March 1, 2020, and June 30, 2021.

Other Provisions

- 17) Requires the department to submit to Joint Legislative Budget Committee on a monthly basis for the duration of the program, a report that provides programmatic performance metrics for funds administered.
- 18) Includes intent language that the state closely monitor the usage of funding to ensure that the program is stabilizing households and preventing evictions.
- 19) Provides that the provisions of this act are severable.
- 20) Provides that no state reimbursement to local agencies and school districts is required.
- 21) Declares that this bill is to take effect immediately and is a bill providing an appropriation related to the budget.

COMMENTS:

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

According to the Author:

Arguments in Support:

None on file.

Arguments in Opposition:

None on file.

FISCAL COMMENTS:

1. Appropriates \$1.5 billion from the Federal Trust Fund to the Department of Housing and Community Development for purposes of implementing the Rental Assistance Program.
2. Provides that the amount appropriated may be adjusted in accordance with additional funding the state receives for Rental Assistance Program.
3. Provides that up to 10 percent of funds appropriated may be expended for the costs to administer the Rental Assistance Program.

VOTES:

SENATE FLOOR: 22-2-15

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Hertzberg, Laird, Leyva, McGuire, Newman, Pan, Portantino, Roth, Rubio, Umberg, Wieckowski, Wiener

NO: Nielsen, Wilk

ABS, ABST OR NV: Bates, Borgeas, Dahle, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Limón, Melendez, Min, Ochoa Bogh, Skinner, Stern

UPDATED:

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CONSULTANT: Genevieve Morelos / BUDGET / (916) 319-2099

FN: