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**SENATE COMMITTEE ON HOUSING****Senator Scott Wiener, Chair****2021 - 2022 Regular**

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**Bill No:** SB 847 **Hearing Date:** 3/24/2022  
**Author:** Hurtado  
**Version:** 1/13/2022 Introduced  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Alison Hughes

**SUBJECT:** COVID-19 relief: tenancy: grant program

**DIGEST:** This bill establishes a COVID-19 Tenancy Grant Program to provide grants to landlords who are otherwise ineligible for the State Emergency Rental Assistance Program (ERAP), as specified.

**ANALYSIS:***Existing law:*

- 1) 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 a population of at least 200,000.
- 2) Establishes the State Emergency Rental Assistance Program (ERAP) within the California Department of Housing and Community Development (HCD) for the provision of federal rental assistance funds in response to the COVID-19 pandemic.
- 3) Requires ERAP funds to prioritize communities disproportionately impacted by COVID-19 as follows:
  - a) First priority shall be households with a household income that is not more than 50% 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.
  - 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% AMI.

- d) Eligible uses for funds made available to an ERAP grantee, unless otherwise specified, shall be as follows
  - i. Rental arrears;
  - ii. Prospective rent payments;
  - iii. Utilities, including arrears and prospective payments for utilities
  - iv. Any other expenses related to housing provided under federal law;
  - v. Any additional use authorized under federal law and guidance.
- 4) 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.
  - 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.
- 5) Requires that the landlord's agreement to accept payment as payment in full shall include the landlord's agreement to release any and all claims for nonpayment of rental debt owed for the specified time period, including a claim for a UD, against any tenant within the eligible household for whom the rental assistance is being provided.
- 6) Provides that a member of an eligible household may directly apply for rental arrears assistance from HCD.
  - 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.
  - 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.

**This bill:**

- 1) Defines “COVID-19 rental debt” as unpaid rent or other unpaid financial obligations of a tenant under the tenancy that came due between March 1, 2020 and September 30, 2021.
- 2) Defines “landlord” as the following or agent of the following:
  - a) Owner of a residential real property.
  - b) An owner of a residential rental unit.
  - c) An owner of a mobilehome park.
  - d) An owner of a mobilehome park space or lot.
- 3) Defines “qualified applicant” as a landlord who satisfies an of the following criteria:
  - a) The landlord applied for rental assistance through the State Emergency Rental Assistance Program (ERAP) and either of the following is true:
    - i. The landlord has been notified of a negative final decision for ERAP assistance.
    - ii. The landlord has been notified that a completed application for rental assistance has been submitted by the landlord or tenant, and both of the following are true:
      - (A) Twenty days have passed since the application was submitted.
      - (B) 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.
- 4) Creates the COVID-19 Tenancy Grant Program (CTGP) at HCD. Awards shall be granted 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 an application, in order to be considered a “completed application,” for a CTGP grant shall meet the following criteria:

- 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 tenants 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.
- 7) 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.
- 8) Provides that money for the program shall be available upon appropriation by the legislature.
- 9) Sunsets the program on January 1, 2025.

**COMMENTS:**

- 1) *Author's statement.* According to the author, “[a]s 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. 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. The Program only provides rental assistance for tenants who make less than or equal to 80% of the area median income (“AMI”). There are homeowners with tenants who are behind on their rent but will never receive any form of government rental assistance because they earned too much money to qualify for the Program. SB 747 would close 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 landlords upon appropriation by the Legislature.”

- 2) *Background on California's COVID-19 Eviction Protections.* In recognition of the dual public health and economic crises that has resulted from the COVID-19 pandemic, the state has enacted a series of eviction protection measures to keep tenants housed. On April 6, 2020, the Judicial Council adopted Emergency Rule 1, which halted nearly all eviction proceedings for residential and commercial tenancies. After the Judicial Council announced plans to repeal Emergency Rule 1, the Legislature enacted AB 3088 (Chiu et al., Chapter 37, Statutes of 2020) as an urgency measure in August of 2020. AB 3088 provided a 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 agreement; rather 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 2021 (Committee on Budget and Fiscal Review, Chapter 2).

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 this time, tenants who attest to COVID-19 hardship cannot be evicted based on failure to pay rent. 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.

- 3) *Subsequent Extension of COVID-19 Eviction Protections (AB 832).* AB 832 (Chiu, Chapter 27, Statutes of 2021) extended the transition time period's end date from June 30, 2021 to September 30, 2021. Tenants had 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, AB 832 made 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.

- 4) *State 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 owe thousands of dollars in rent debt. 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 received funds directly from the Department of the Treasury and were 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 and some local jurisdictions received 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, 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:

- a) *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.
- b) *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.

- c) *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. In Option C jurisdictions, the city 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. 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").

- 5) *Additional Federal Funds.* Federal statutes that authorized rental assistance funds also included spending targets and "clawback" mechanisms for jurisdictions that failed to meet those targets. Clawed backed funds are then eligible to be redistributed to jurisdictions that met the required targets on time and provide additional support to low-income renters. The first deadline already passed, and as a result, California received an additional \$62.5 million. (SEE COMMENT 8 for more information)
- 6) *June 2021 Expansion of the State's Rental Assistance Program (AB 832).* In order to provide crucial support to renters and property owners who were continuing to face financial setbacks during COVID-19 crisis, AB 832 (Chapter 27, Statutes of 2021) made a number of changes to the rental assistance program going forward. In general, AB 832 increased payment levels and broadened the eligibility criteria to reach additional households that had been left out of the original SB 91 rental assistance program. All rental assistance programs are still required to follow applicable federal rules on income eligibility, reporting, and categories of payment allowed.

However, AB 832 implemented the following changes to the state's rental assistance framework:

- a) 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.
  - b) Allowing 100% coverage of tenant rent debt in situations where a landlord refuses to apply. Before then, tenants could 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.
  - c) Allowing rental assistance payments to be provided to cover rent debt for situations where a tenancy has already ended.
  - d) Requiring all rental assistance programs to, by September 15, 2021, add in the capacity to report specified information to the courts, landlords, and tenants.
- 7) *Evictions During the "Recovery Period" from October 1, 2021 - March 31, 2022.* Under changes in AB 832, after September 30, 2021, landlords were no longer 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 is able to use the UD process to evict a residential tenant who has not paid their rent by taking steps specified in AB 832.

- 8) *Current Status of the State Rental Assistance Program.* As part of the U.S. Treasury's reallocation process, California submitted a formal request in November 2021 for \$1.91 billion to be reallocated from the Round 1 "clawed back" federal funds. Additionally, several jurisdictions running local rental assistance programs in California have submitted reallocation requests in November or January, or both. The state announced the receipt of \$62.5 million on January 7, 2022, and as of February 18<sup>th</sup>, eight local jurisdictions have received \$18.1 million total. HCD made a subsequent request to Treasury in January for an additional \$1.9 billion for direct assistance, and received an additional round of funds totaling \$136 million on March 14<sup>th</sup>.

According to HCD, cumulatively the state-administered program has expended nearly \$1.9 billion in rental and utility assistance through January 31. Of the total, as of March 9, 85% of funds benefit those at or below 50% AMI, and nearly 62% below 30% AMI.



Additionally, on February 9th, 2022, the Governor signed SB 115 (Committee on Budget and Fiscal Review, Chapter 2), which requires the Department of Finance to loan General Fund dollars to ERAP, or to locally-administered rental assistance programs, to be paid back with federal funds upon reallocation of federal funds to California for rental assistance. Further it requires the Department of Finance to forgive the amounts not covered by the federal allocation.

Despite these efforts, it is not likely that the federal government will provide sufficient funds to meet the requested needs for those under the current program.

- 9) *A new program to help landlords.* This bill would create a new program, funded upon appropriation by the Legislature, to provide grants to eligible landlords for rental debt accumulated between March 1, 2020 and September 30, 2021. Eligible applicants include landlords who own real property, own a residential rental unit, own a mobilehome park, or own a mobilehome park space or lot, and funds would be awarded on a first-come, first-served basis. A landlord can receive a grant from this new program equal to 100% of the rent owed if the landlord does not qualify for the ERAP program (in other words, the tenant makes more than 80% AMI), if the landlord submitted an application for ERAP and following 20 days, HCD had not rendered a decision on their ERAP application, or the landlord obtained a civil judgement against the tenant to recover the rental debt.

The current version of the bill would permit any landlord, including large, corporate landlords to apply for state funds. **In order to ensure state funds are targeted, the author has agreed to amend the bill to prioritize smaller landlords over corporations as follows:**

**(2)(A) A landlord is a “tier one applicant” if the landlord 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 \$100,000 in grants from the program.**

**(B) The program shall provide grants to all tier one applicants before providing grants to other applicants.**

Moving forward, the author may wish to further clarify that a tenant shall not be evicted should their landlord benefit from this new program and create a mechanism to ensure that a tenant does not suffer any lingering credit consequences if their debt has been cleared.

10) *Who does this help?* There is no doubt the global pandemic adversely impacted most people the world over; as noted in Comment 8 above, however, the California program is already oversubscribed by nearly \$2 billion, and by and large those receiving assistance have been the lowest-income Californians. In other words, the demand thus far has been greatest for those who have the most to lose and are at greatest risk of homelessness. The committee may wish to consider whether general fund investments for higher-income populations are the greatest use of our limited resources.

11) *All about the money.* The bill does not contain a dollar figure for investment in this program. Additionally, given that this bill is largely a new funding program, the author may wish to instead pursue a budget request.

12) *Double-referral.* This bill was also referred to the Senate Judiciary Committee, which, among other things, has jurisdiction over landlord and tenant related issues.

#### **RELATED LEGISLATION:**

**SB 115 (Committee on Budget and Fiscal Review, Chapter 2, Statutes of 2022)** — required DOF to provide loans to state and local emergency rent relief programs, to be paid back with federal reallocation funds.

**AB 832 (Chiu, Chapter 27, Statutes of 2021)** — extended tenant, landlord, and homeowner protections until September 30, 2021; extends the dates around statewide uniformity / preemption rules until March 31, 2022; and makes several changes to the state’s emergency rental assistance program.

**SB 91 (Committee on Budget and Fiscal Review, Chapter 2, Statutes of 2021)** — among other things, extended the eviction protections provided for in AB 3088.

**AB 3088 (Chiu, Chapter 37, Statutes of 2020)** — created a statutory framework for COVID-19 eviction protections for residential renters and mobilehome owners facing economic hardships as a result of the COVID-19 pandemic.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**POSITIONS: (Communicated to the committee before noon on Thursday,  
March 17, 2022.)**

**SUPPORT:**

California Apartment Association (Sponsor)  
Councilmember Garry Bredefeld, City of Fresno  
Councilmember Luis Chavez, City of Fresno  
Councilmember Mike Karbassi, City of Fresno  
Councilmember Paul Canepa, City of Stockton  
Councilmember Nelson Esparza, City of Fresno  
Councilmember Sol Jobrack, City of Stockton  
Councilmember Tyler Maxwell, City of Fresno  
Mayor Jerry Dyer, City of Fresno  
Mayor Karen Goh, City of Bakersfield  
Mayor Kevin J. Lincoln II, City of Stockton  
Supervisor Brett Frazier, County of Madera  
Supervisor Chuck Winn, County of San Joaquin  
Supervisor Miguel A. Villapudua, County of San Joaquin  
Supervisor Robert Rickman, County of San Joaquin  
Supervisor Sal Quintero, County of Fresno  
Supervisor Steve Brandau, County of Fresno  
Supervisor Terrance P. Withrow, County of Stanislaus  
California Association of Realtors  
City of Ontario  
Fuller Enterprises  
San Francisco Bay Area Planning and Urban Research Association (SPUR)

**OPPOSITION:**

None received.

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