
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2019 - 2020 Regular

Bill No:	SB 1410	Hearing Date:	5/26/2020
Author:	Lena Gonzalez		
Version:	5/18/2020 Amended		
Urgency:	Yes	Fiscal:	Yes
Consultant:	Erin Riches		

SUBJECT: Rental assistance: COVID-19 Emergency Rental Assistance Program

DIGEST: This urgency bill creates the COVID-19 Emergency Rental Assistance Program.

ANALYSIS:

Existing law:

- 1) Establishes the California Emergency Solutions and Housing Program (CESH) under the Department of Housing and Community Development (HCD), which funds a variety of activities to help individuals experiencing or at risk of homelessness. Eligible activities fall into five primary categories: housing relocation and stabilization services, including rental assistance; operating subsidies for permanent housing; flexible housing subsidy funds; operating support for emergency housing interventions; and systems support for homelessness services and delivery systems.
- 2) Establishes the Emergency Solutions Grant program (ESG) under HCD, which provides funds to address homelessness. Eligible activities include outreach to homeless individuals and families living on the street; rapid rehousing for homeless individuals and families; helping to operate and provide essential services in emergency shelters; and preventing homelessness.

This urgency bill:

- 1) Creates the COVID-19 Emergency Rental Assistance Program (CERAP) under HCD.
- 2) Authorizes HCD, in order to accelerate implementation of CERAP, to either:
 - a) Direct an existing office or program within HCD to implement the program.

- b) Contract with private entities; local housing authorities; or local governments, nonprofit organizations, or unified funding agencies designated by Continuums of Care. Requires HCD to ensure equitable geographic distribution of funds distributed through such a contract.
- 3) Waives guidelines or policies adopted by HCD to implement this program from the rulemaking provisions of the Administrative Procedures Act.
- 4) Provides that a household shall be eligible for assistance under CERAP if both the following conditions are met:
 - a) The household demonstrates inability to pay rent due to COVID-19 or a state, local, or federal response to the COVID-19 pandemic. “Inability to pay rent” as defined as inability to pay all or part of the rent due between April 1, 2020 and December 31, 2020.
 - b) The owner of the unit rented by the household agrees to participate in the program. An owner shall not be required to participate.
- 5) Provides that a household may demonstrate inability to pay rent by showing any of the following:
 - a) Loss of income due to a COVID-19 related workplace closure.
 - b) Childcare expenditures due to a COVID-19 related school closure.
 - c) Health care expenses related to being ill with COVID-19 or caring for a member of the household who is ill with COVID-19.
 - d) Reasonable expenditures stemming from government-ordered emergency measures related to COVID-19.
- 6) Provides that the process to determine a household’s inability to pay rent may also consider any wage replacement provided to the household through programs that include, but are not limited to, unemployment insurance, disability insurance, and federal relief or stimulus payments.
- 7) Requires an owner who participates in CERAP to:
 - a) Not increase the gross rental rate for the unit between the date the landlord consents to participate and December 31, 2020.
 - b) Not charge, or attempt to collect a late fee, for any rent payment due between April 1, 2020 and December 31, 2020.
 - c) Accept the payment provided under CERAP, or existing funds from a city or county, as full payment of the missed or insufficient rent payments for which

- CERAP provides assistance. This payment shall not be construed as a change to the gross rental rate or a rent reduction under any local ordinance.
- d) Not file an unlawful detainer action based on nonpayment of rent with respect to any rental period for which the owner receives payment under CERAP.
 - 8) Provides that each payment to an owner under CERAP shall equal at least 80% of the amount of rent owed by the household to the owner and shall specify what periods are covered by that payment. Requires the administering entity, when it issues payment to an owner, to also provide written notice to the renter household.
 - 9) Provides that CERAP shall cover no more than seven months of missed or insufficient rent payments.
 - 10) Provides that CERAP payments shall not be considered a source of income or a government rent subsidy.
 - 11) Creates the COVID-19 Emergency Rental Assistance Fund and, upon appropriation by the Legislature, distributes all monies in the Fund to HCD for CERAP. Provides that program implementation is subject to funding being made available in the budget. States intent that available federal funds shall be prioritized over General Fund monies for this purpose.

COMMENTS

- 1) *Author's statement.* "The COVID-19 pandemic has created a public health and economic crisis that is forcing many families to decide between paying rent or putting food on the table. The critical need for the public to shelter at home has caused a record number of workers to lose their jobs. With many families now dependent on state and federal benefits, there is increased anxiety about facing eviction or homelessness. California needs an immediate and ambitious statewide program that can provide direct financial assistance during this crisis. SB 1410 is urgency legislation that will establish the COVID-19 Emergency Rental Assistance Program under the Department of Housing and Community Development. California renters will be eligible for this program if they can demonstrate an inability to pay rent due to the COVID-19 pandemic, and their property owner agrees to participate. SB 1410 will provide qualifying property owners with financial assistance to cover at least 80 percent of the monthly rent their tenant owes for up to seven months, provided that they agree to not pursue the remaining 20% of owed rent; not increase rent for a specified period; and not access late fees on rent paid through the program."

- 2) *HCD workload.* As initially drafted, this bill placed sole implementation authority on HCD. As such, it required HCD to confirm both a tenant's inability to pay, and the landlord's consent to participate, in order for a tenant to be eligible for assistance. HCD would need to establish processes for both. In addition, HCD would issue payments directly to landlords. This would mark a significant departure from other HCD programs, under which funding is generally provided in the form of loans or grants to cities, counties, Continuums of Care, developers, or other entities – not to individuals. HCD already has a significant workload in helping to implement the Veterans and Affordable Housing Bond of 2018 (Proposition 1), which provides \$4 billion for programs under the Department of Veterans Affairs, the California Housing Finance Agency, and HCD; the No Place Like Home Act of 2018 (Proposition 2), which authorized the sale of up to \$2 billion of revenue bonds and the use of a portion of Mental Health Services Act funds for the No Place Like Home Program; as well as other program funding provided in recent years.

To address concerns about HCD workload, the author recently amended this bill (May 18, 2020) to authorize HCD to contract with private entities, local housing authorities, or entities designated by Continuums of Care (similar to CESH) to implement the program. As the bill is currently written, HCD is still tasked with drafting and adopting program regulations and policies, and to oversee the entities implementing the program.

- 3) *Landlord is in the driver's seat.* Even if a renter household qualifies for assistance under CERAP, they can only obtain assistance if their landlord consents to participate in the program. The California Apartment Association (CAA), sponsor of this bill, states that making landlord participation mandatory would mean that landlords would effectively forgive or cancel 20% of the rent that their tenant had agreed to pay. Both the state and federal constitutions prohibit governments from passing laws that impair the obligation of contracts; according to CAA, denying rental housing providers 20% of their rental income would constitute a substantial impairment of their contract. In addition, CAA notes that the Fifth Amendment to the US Constitution prohibits taking of property without just compensation. That provision is designed to bar the government from forcing particular people to bear public burden, which in all fairness should be borne by the public as a whole. Finally, CAA notes that the San Jose City Council recently voted down a proposal to require landlords to forgive 25% of rent, based on the city attorney's conclusion that such a policy would be prohibited by these provisions of the Constitution and would result in significant legal exposure for the city.

In addition, if a landlord does choose to participate, program payments are made directly to the landlord. While the bill specifies that a landlord must agree to maintain rent levels, not charge late fees, accept the reduced amount as full payment, and not file an unlawful detainer action for nonpayment of rent, it is unclear how many landlords would be willing to accept these terms and if so, how it would be enforced.

- 4) *Existing rental assistance programs.* Rental assistance is an eligible use under recent federal appropriations through the Community Development Block Grant (CDBG) program. In addition, rental assistance is an eligible use under a number of existing state programs, including:
 - a) *California Emergency Solutions and Housing (CESH).* CESH was created in 2018 (SB 850, Committee on Budget and Fiscal Review, Chapter 48, 2018); the 2018 budget directed a portion of first-year revenues from the Building Homes and Jobs Act Trust Fund (SB 2, Atkins, Chapter 364, 2017) to CESH. CESH provides funds to eligible administrative entities (designated by a Continuum of Care) in the form of five-year grants for various activities to assist individuals who are experiencing or who are at risk of homelessness. Eligible activities fall into five primary categories: housing relocation and stabilization services, including rental assistance; operating subsidies for permanent housing; flexible housing subsidy funds; operating support for emergency housing interventions; and systems support for homelessness services and delivery systems.
 - b) *Emergency Solutions Grant program (ESG).* ESG, a federal program administered by HCD, provides grant funds to address homelessness. Funding is allocated to Continuums of Care, who select homeless service providers to receive the funds. Eligible activities include outreach to homeless individuals and families living on the street; rapid rehousing for homeless individuals and families; helping to operate and provide essential services in emergency shelters; and preventing homelessness.
 - c) *CalWORKS housing programs.* In addition, the state Department of Social Services oversees five housing programs designed to assist recipients of its other programs (such as CalWORKs and Adult Protective Services) who are homeless or at risk of becoming homeless. These programs are the CalWORKs Housing Support Program, CalWORKs Homeless Assistance Program, Bringing Families Home Program, Housing and Disability Advocacy Program, and the Home Safe Program. All of these programs provide, either directly or indirectly, forms of rental assistance.

- 5) *Is a new program needed?* As noted above, rental assistance is already an eligible use of funds under multiple state programs, as well as at least one federal program. While these programs are primarily focused on individuals experiencing homelessness or at risk of homelessness, a tenant in danger of being evicted for missing multiple rent payments could arguably be classified as at risk of becoming homeless. Rather than creating a new program, the author may wish to consider directing funds to an existing program such as CESH, and creating a set-aside in that program for renters impacted by COVID-19.
- 6) *Opposition concerns.* Opponents raise several concerns:
- a) Many tenants in need – such as those who are self-employed or whose employers refuse to cooperate with requests for documentation – may not be able to demonstrate lost income, and therefore would not be eligible for CERAP.
 - b) Even after successfully navigating the approval process, a tenant could be excluded from CERAP if their landlord refused to participate. This would not only leave a tenant with no rental assistance, but they would also be vulnerable to eviction (this bill’s eviction protections only cover CERAP participants).
 - c) This bill does not appear to target renters most in need, posing the risk that program funds could be exhausted without helping those who need it most.
 - d) Asking HCD, local housing authorities, or Continuums of Care to approve or deny potentially hundreds of thousands of individual applications is a huge administrative burden to place on entities that already struggling to administer existing programs.

RELATED LEGISLATION:

SB 1015 (Skinner) — establishes the Keep Californians Housed Fund under HCD for rental assistance for homeless individuals and revises the definition of “homelessness” under specified state programs. *The author has dropped this bill.*

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

POSITIONS: (Communicated to the committee before noon on Wednesday, May 26, 2020.)

SUPPORT:

California Apartment Association (Sponsor)
Boma California
CalChamber

California Building Industry Association
California Business Properties Association
California Council for Affordable Housing
California YIMBY
City of Mountain View
City of Paramount
Commercial Real Estate Development Association, NAIOP of California
International Council of Shopping Centers
League of California Cities Latino Caucus
Orange County Business Council
1 Individual

OPPOSITION:

ACT-LA
Alliance of Californians for Community Empowerment (ACCE) Action
Bend the Arc-Jewish Action SLO
Berkeley Tenants Union
California Rural Legal Assistance Foundation, INC.
Crenshaw Subway Coalition
Eviction Defense Network
Housing California
Housing Long Beach
Housing Now! CA
Just Cities/Dellums Institute for Social Justice
Koreatown Immigrant Workers Alliance
LA Forward
Latino Health Access
Monument Impact
One Redwood City
PICO CA
Pomona United for Stable Housing (PUSH)
San Diego Tenants Union
San Francisco Tenants Union
UAW 2865
Western Center on Law & Poverty

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