

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3691

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: JUNE 30, 2021

SUMMARY

- Synopsis:** Provides financial relief to certain landlords and tenants in response to COVID-19 pandemic, adjusts certain court fees; and makes appropriations.
- Type of Impact:** Potential increase in State expenditures and revenues. Potential increase in local revenues.
- Agencies Affected:** Department of Community Affairs, Attorney General, the Judiciary, and local housing authorities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Unpaid Rent from March 9, 2020 to</u> <u>August 31, 2021 or December 31, 2021</u>	
	Potential State Cost Increase	
Potential State Revenue Increase		Indeterminate
Potential Local Revenue Increase		Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill may potentially: (1) increase State expenditures attributable to increased administrative costs for the Department of Community Affairs (DCA), the Attorney General, and the Judiciary; (2) increase State revenues due to a court's ability to impose a fine on a non-compliant landlord and a \$7 Special Civil Part court fee; and (3) increase local revenues attributable to certain local units serving as a local housing authority, and thereby a landlord eligible for assistance from funding provided by federal funds appropriated under the bill.
- The bill requires the DCA to establish an "Eviction Prevention program" to supplement the COVID-19 Emergency Rental Assistance Program Phase II (CVERAP II) program opened by the department on March 22, 2021, publish regulatory guidance to further the purpose of the program, and award grants to eligible households.
- The bill would authorize the Attorney General, in response to a complaint from a tenant, or on the Attorney General's independent initiative, to bring an action against a landlord who has

allegedly violated the bill's restrictions on nonpayment information dissemination. Following the opportunity to correct any first violation, and upon a finding that non-compliance has occurred, the bill would authorize a court to impose a fine on a non-compliant landlord, not to exceed \$500 for a first violation, \$1,000 for a second violation, and \$2,500 for each subsequent violation, which would lead to an indeterminate increase in State revenues.

- The bill also requires the Administrative Director of the Courts to provide information on tenant protections, rental assistance programs, and the necessary income and COVID-19 impact attestations to obtain assistance to any residential tenant who is party to a landlord tenant dispute for nonpayment of rent. The courts could limit these costs through the bill's establishment of a the Special Civil Part court fee for serving or executing any process, writ, order, execution, notice, or warrant as a \$7.00 fee.
- Additionally, according to information on the federal Department of Housing and Urban Development website, approximately 82 municipalities in the State serve as the local housing authority. Under the bill, local housing authorities collecting rental payments would be eligible to receive assistance from federal funds appropriated under the bill. The bill would appropriate at least \$755 million in federal funds to effectuate the provisions of the bill.
- Finally, the OLS is unable to estimate how much unpaid rent is owed to local housing authorities and eligible for compensation under the program. Additionally, the ability for the DCA to withhold rental payments due to a violation if implied warrant of habitability could delay local revenues if the local housing authorities violate this obligation.

BILL DESCRIPTION

This bill would provide financial relief to certain residential landlords and tenants in response to the COVID-19 pandemic, and alter certain court fees.

Specifically, the bill would protect very low-, low-, moderate-, and middle-income households from residential evictions based upon nonpayment or habitual late payment of rent, or a failure to pay a rent increase, that accrued during the covered period, which began on March 1, 2020, and would last until the end of August, 2021. However, for certain very-low, low-, and moderate-income tenants, eviction protections would last until the end of 2021. The bill establishes definitions for very low-income, low-income, moderate-income, and middle-income households as those with incomes of 30 percent or less than, 50 percent or less than, between 50 and 80 percent of, and 80 percent to 120 percent of the area median income, respectively. The bill would require that payments made by a tenant after the covered period ends would be credited first to the current month's rental obligation, and any balance would be credited to any arrearage owed by the tenant. The bill provides that amount of rent due to a landlord during the covered period would be considered civil debt and could be pursued as a money judgment.

The bill provides that any amount of unpaid rent due either prior to the start of the covered period or after the covered period ends may be pursued in the manner allowed by law for any other landlord-tenant action for rent due outside of the covered period. Eviction protections in the bill would continue to apply to very low-, low-, and moderate-income household tenants through the end of 2021 if the tenant household certifies, under penalty of perjury, (1) the amount of the household's income, (2) that the household was unable to pay rent due to circumstances arising from the pandemic, and (3) that the household has applied for certain rental assistance programs.

These certifications would be made on a form provided by the DCA. When completed, the tenant would provide a copy to the landlord, and to the court if facing a pending eviction action.

The bill directs the Administrative Director of the Courts to provide information on tenant protections, rental assistance programs, and the necessary income and COVID-19 impact attestations to obtain assistance to any residential tenant who is party to a landlord tenant dispute for nonpayment of rent.

The bill would require that all pending eviction actions alleging nonpayment, habitual late payment, or failure to accept an increase of residential rent that accrued during the covered period shall be dismissed upon certification that the tenant is very low-, low-, moderate-, or middle-income and that the reason for filing was nonpayment or habitual late payment of rent, or failure to pay a rent increase, during the covered period.

As a condition of receiving certain rental assistance, the landlord would be prohibited from imposing late fees for residential rent payments during the period when the assistance is provided.

The bill would prohibit a landlord from furnishing information about the nonpayment or late payment of rent, or failure to pay a rent increase, which accrued during the covered period, or other court filings or proceedings related to non-payment or late payment of rent which accrued during the covered period, directly to another residential landlord, or to a debt collection or credit reporting agency. This restriction would not apply to a tenant's rent payments that remain due as the result of a payment missed prior to March 1, 2020, limit the ability of a landlord to share information with the landlord's attorney or property management company, or notice the tenant in compliance with the Anti-Eviction Act.

If the action is conducted as a result of any record or information reflecting a tenant's non-payment or late payment of rent, or a related court filing, during the covered period, the bill would prohibit a landlord from refusing to rent to a prospective residential tenant, or placing, or disseminating a tenant's information for the purpose of placing, a tenant on a list for the use of other landlords for any purpose.

The bill would authorize the Attorney General, in response to a complaint from a tenant, or on the Attorney General's independent initiative, to bring an action alleging a landlord has violated the bill's restrictions on nonpayment information dissemination. Regarding a first violation, the court would provide the landlord with an opportunity to correct the violation prior to imposing a penalty. Following the provision of this opportunity to correct any first violation, upon a finding that non-compliance with this subsection has occurred, the bill would authorize a court of competent jurisdiction to:

- order the non-compliant landlord to retract the report of debt or court filing data;
- impose a fine on the non-compliant landlord, not to exceed \$500 for a first violation, \$1,000 for a second violation, and \$2,500 for each subsequent violation;
- order the non-compliant landlord to pay the tenant's reasonable counsel fee;
- provide a free copy of the order immediately upon the request of the tenant;
- order the non-compliant landlord to take such steps as are necessary, within 30 days of the order, to rehabilitate the credit record of the tenant; and
- if the tenant is able to show actual damages that have resulted from this violation, order the non-compliant landlord to pay an award of damages to the tenant not to exceed 25 percent of the debt attempted to be collected or reported by the non-complaint landlord to the collection or credit reporting agency, bureau, or data collection facility, with a minimum award of \$350.

A landlord who has furnished rental payment data to another landlord, collection or credit reporting agency related to the non-payment of rent during the covered period, but before the enactment of the bill would not be subject to these penalty provisions, except for any order to retract the report.

The bill would direct the Commissioner of Community Affairs to establish an “Eviction Prevention Program” to provide residential rental relief to residents who struggle to pay rent because of financial hardship directly or indirectly incurred as a result of the COVID-19 pandemic. The program would be open to accepting applications for assistance no later than the end of August, 2021. The commissioner would administer the program to provide for the following: (1) the program would be a supplement to the COVID-19 Emergency Rental Assistance Program Phase II (CVERAP II) program opened by the department on March 22, 2021, (2) a household would be eligible to participate in the program if, for reasons of pandemic-related hardship, the household is unable to make residential rental payments which are due and owing pursuant to a valid and enforceable oral or written lease, stipulation of settlement, judgment, order or other type of legally binding agreement, (3) a household would be eligible for assistance under this program regardless of whether the household has been served with a summons and complaint for eviction, (4) a household would be eligible for assistance if their annualized current income is no more than 80 percent of the area median income; however, the commissioner may establish funding priorities to benefit very low- and low-income households, (5) a household would be eligible for assistance under this program although it may be unlikely for the household to have the ability to pay shelter costs after the period of assistance has ended, (6) a household would be permitted to use assistance to pay current rent, accrued rent, and future rent, as determined by the department, and (7) the department would award grants for periods of up to two years or rent, depending upon the person’s or household’s particular circumstances and available funding. The department would provide assistance along a continuum based upon the income level of the tenant household, and would include deep subsidies, shallow subsidies, and flat amounts. The bill would authorize these grants be renewed to prevent eviction or homelessness. The commissioner would award grants for ongoing rent in accordance with the following guidelines and principles: (a) for a very low-income household, a deep subsidy may be provided in the amount necessary to limit the household’s share of ongoing rent to not more than 30 percent of the household’s income, (b) for a low-income household, a shallow subsidy may be provided in the amount necessary to limit the household’s share of ongoing rent to not more than 30 percent of the household’s income, provided, however, that the amount of any such subsidy would not exceed \$800 per month, and (c) for a moderate-income household, assistance in the form of a subsidy sufficient to limit the household’s share of ongoing rent to 30 percent or less of the household’s income, provided the subsidy does not exceed \$500 per month.

Finally, to qualify for rental assistance through the program, households would be required to demonstrate that someone in the household: (a) qualifies for unemployment or has experienced a reduction in household income, incurred significant costs, or experienced a financial hardship, as a direct or indirect consequence of the pandemic; (b) demonstrates a risk of experiencing homelessness or housing instability; (c) falls within a household income threshold that establishes eligibility for rental assistance under the program; (d) has a lack of assets and savings to pay rent arrears or current and future rent; (e) is a State resident; and (f) is obligated to pay rent on a residential dwelling.

During the course of the payment period, if the department is notified by either the landlord or the program participant that a person or household has begun to experience difficulty paying rent due to pandemic-related hardships, the household’s income would be reevaluated in light of the changed conditions, and the person or household would be placed in a different assistance tier, if necessary, to prevent eviction. The program would require that, during the course of the payment period, a participant household would certify the household’s current income and family situation once every six months using a brief form to be developed by the department, including any necessary attachments. Beginning the month following receipt of a certification, the department would increase or decrease the amount of subsidy provided to the household in accordance with

the subsidy category applicable to the most recent reported income, provided that limited non-recurring short term increases in income would not require a subsidy adjustment. Finally, during the payment period, if a participating tenant experiences conditions that violate the implied warranty of habitability, the tenant would be authorized to certify those conditions to the department in writing. Based on this certification, the department would have an inspection conducted on the dwelling. Upon confirmation, and after providing the landlord an opportunity to cure, the department would consider whether and in what amount rent may be withheld.

No later than August 31, 2021, the department would be required to implement a comprehensive public information plan to ensure that eligible tenants are aware of the assistance provided by the program, and would provide such information in languages including English and Spanish. In addition, the department would prepare a form notice, in languages including English and Spanish, describing the program and distribute the notice to landlords for inclusion with any notice or complaint sent to a tenant related to an eviction for nonpayment of rent. Prior to the end of covered period, the landlord would be required to post a written notice in a conspicuous location within the common area of a multiple dwelling.

A program application would be required to state the monthly rent as established in the lease, the amount paid by the tenant or third parties, if any, the amount unpaid, the amount of security deposit funding that the tenant has applied against rent, and any other information required by the department for determining financial need.

An application would include a certification by the tenant as to the number of occupants of the unit, the tenant household's income, a brief statement or by the tenant explaining how the pandemic affected the tenant's ability to pay rent, and any other information required by the funding sources from which the program payments will be made.

Within 60 days following enactment, the bill would require the department to establish an "Office of Eviction Prevention," which would be responsible for: (1) the identification of all federal, State, local and other sources of financial assistance that could be used to prevent the eviction of residential tenants; (2) becoming knowledgeable with regard to the application process for each such program; and (3) identifying, and proposing remedies for, the gaps in the overall assistance system. This office would be responsible for the compilation, publication, and ongoing update of this information, and for working with at least one non-profit, community-based organization in each county to enhance public awareness of the availability of and means of accessing such financial assistance by at-risk tenants.

The bill would also adjust the provisions of P.L.2020, c.1, which enhanced the Governor's powers to prevent evictions during times of a public health emergency or state of emergency, making the provisions only applicable to the COVID-19 pandemic. The bill would further require any restrictions on evictions established by Executive Order 106 of 2020 to expire on either August 31, or December 31, depending on a tenant's income level and certification. Restrictions on foreclosures established by the same executive order would expire on November 15, 2020.

The bill would also establish the Special Civil Part court fee for serving or executing any process, writ, order, execution, notice, or warrant as a \$7.00 fee.

Finally, the bill would appropriate from the funds provided to the State by the United States government for the purpose of providing relief to tenants affected in any way by the COVID-19 pandemic: for the "Eviction Prevention Program" the sum of \$750,000,000; for the Office of Eviction Prevention the sum of \$5,000,000. The bill directs that, of the monies appropriated, the department would use \$500,000,000 as rent assistance for very-low, low-, moderate-, and middle-income tenants, and the remainder for utility assistance. The bill also authorizes the department to use up to 2.5 percent of the appropriated monies for the purpose of funding those actions needed to effectively implement and administer the Eviction Prevention Program, \$2,000,000 million of

which would be provided to nonprofit organizations for education and outreach regarding this program.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

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Section: Local Government

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).