LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 3357

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: FEBRUARY 25, 2021

SUMMARY

Synopsis: Addresses certain landlord expenses in response to COVID-19 pandemic; appropriates $350 million.

Type of Impact: Potential increase in State expenditures and revenues. Potential increase in local revenues.

Agencies Affected: Department of Community Affairs, Attorney General, Department of the Treasury, and local housing authorities.

Office of Legislative Services Estimate

Fiscal Impact	Taxable Year of the Credit and the Following Three Taxable Years
Potential State Cost Increase	Up to approximately $70 million
Potential State Revenue Increase	Indeterminate
Potential Local Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill may: (1) potentially increase State expenditures attributable to increased administrative costs for the Department of Community Affairs (DCA), the Attorney General, and the Department of the Treasury; (2) increase State expenditures attributable to a new gross income tax credit for landlords forgiving unpaid rent; (3) potentially increase State revenues attributable to a court imposing fines on certain non-compliant landlords; and (4) potentially increase local revenues due to certain local units serving as a local housing authority, and thereby a landlord eligible for assistance from the Landlord Emergency Compensation Program established under the bill.

- The OLS does not have exact data on how many of the State's 192,000 to 419,000 renter households facing eviction due to unpaid rent are 80 percent of their regional median gross household income. However, when accounting for the bill's $350 million appropriation, $344 million in recent rental assistance from the federal government, and other assumptions, the OLS estimates the State could be responsible for providing up to approximately $70 million in tax credits to landlords over the three taxable years following the taxable year for which the credit is allowed, based off unpaid rent figures from January 2021.

- 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 the program.

BILL DESCRIPTION

The bill would establish the Landlord Emergency Compensation Program in the DCA. The bill would allow eligible landlords to apply for assistance, in the form of financial compensation, during an assistance period in the time of the Coronavirus pandemic. The bill defines the assistance period as the period beginning April 1, 2020 and ending two months following the end of the public health emergency declared in Executive Order No. 103 of 2020.

The bill authorizes a landlord to apply for assistance payments to compensate for the unpaid rent, due during the assistance period, that a landlord's residential tenants have owed, but have not paid.

The program would not provide assistance to a landlord for unpaid rent for which the landlord has obtained compensation, or has an outstanding application for compensation, through a different program that the DCA has determined to preempt the landlord from eligibility.

As soon as practicable following enactment, the bill directs the DCA to prepare and make available, on its Internet website, information for landlords on: (1) when assistance applications will be available, (2) the necessary steps for application submission, (3) how to obtain help in application completion, and (4) other matters related to assistance applications that the DCA deems necessary. This information would be made available in English, Spanish, and any other languages determined necessary. Once assistance applications are made available, the DCA would provide for the establishment and maintenance of a toll-free telephone hotline available, at a minimum, weekdays between 8:30 a.m. and 5:30 p.m. through which a landlord may ask questions and obtain help in application completion.

An intentional misrepresentation by a landlord of any information to obtain an assistance payment would constitute a crime of the fourth degree under the bill, in addition to other applicable penalties. A crime of the fourth degree is ordinarily punishable by a term of imprisonment of up to 18 months or a fine of up to $10,000, or both.

The bill would also prohibit a landlord from furnishing rental payment data to a debt collection or credit reporting agency related to the non-payment of rent for a residential unit during the assistance period, unless the furnished data only reports the rental payments as current. This prohibition, however, would not: apply to a tenant's rent payments that remain due as the result of a payment missed prior to the effective date of Executive Order No. 106 of 2020, including payments held in escrow before that date; or limit the ability of a landlord to share information with the landlord's attorney or property management company, or to notify the tenant in compliance with the State law.

If done as a result of any record or information reflecting a tenant's non-payment of rent during the assistance period, the bill would prohibit a landlord from: refusing to rent to a 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.

In response to a complaint to the Attorney General from a tenant, or on the Attorney General's independent initiative, the bill authorizes the Attorney General to bring an action alleging that a landlord has violated the provisions of the bill concerning the furnishing of information to a collection or credit reporting agency. Regarding a first violation, the court would provide the landlord with an opportunity to correct prior to imposing a penalty. Following the provision of

this opportunity to correct any first violation, upon a finding that non-compliance by a landlord has occurred, a court would be authorized to:

(1) order the non-compliant landlord to retract the report of debt;

(2) 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;

(3) order the non-compliant landlord to pay a reasonable counsel fee in connection with a tenant whose debt has been reported;

(4) provide a copy of the order immediately upon the request of the tenant and at no cost to the tenant;

(5) order the non-compliant landlord to take such steps as are necessary, within 30 days of the order, to rehabilitate the credit record of a tenant, with an exact copy provided to the tenant at no cost; and

(6) if the tenant is able to show actual damages that have resulted from a violation of this section, 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-compliant landlord to the collection or credit reporting agency, bureau, or data collection facility, the minimum award being $350.

If a landlord furnishes rental payment data to a collection or credit reporting agency related to the non-payment of rent during the assistance period, but before the enactment of this bill, the landlord would not be subject to these penalty provisions, except for an order to retract the report.

Additionally, the bill would provide the DCA with authority to promulgate regulations to effectuate the requirements of the bill, and with authority to limit application of the program as necessary to comply with the Coronavirus Aid, Relief, and Economic Security (CARES) Act and other federal law.

The bill also provides a taxpayer who is a landlord for one or more residential units occupied by a tenant with a household income of less than 80 percent of the median gross household income a credit against gross income taxes otherwise due for the taxable year in an amount equal to the amount of rent that one or more tenants do not pay in a taxable year during the assistance period, minus the amount of assistance provided to the landlord for the same property otherwise received by the taxpayer pursuant to the bill. A landlord awarded an income tax credit would be required to refrain from evicting a tenant and permanently forgive the same amount of unpaid rent owed by a tenant that the landlord received in assistance payments or income tax credits.

The tax credit may not reduce the tax liability to an amount less than zero, but any unused credit may be carried forward, if necessary, to the three taxable years following the taxable year for which the tax credit is allowed. Business entities classified as partnerships for federal income tax purposes and New Jersey S corporations are not eligible for the tax credit directly, however, a taxpayer may receive a credit based on the taxpayer's distributive or pro-rata share of income from the partnership or corporation. The Director of the Division of Taxation in the Department of the Treasury would be authorized to prescribe forms as necessary to certify that a tenant meets the income limitations.

Finally, the bill would appropriate $350 million from the funds provided to the State by the federal government under the CARES Act for assistance under the program established by the bill, of which no more than $1,500,000 would be used by the DCA to defray the administrative costs of the program. However, in the event that the $350 million is not available through the CARES Act, then the remainder would be appropriated from other federal funding available for coronavirus relief as it becomes available. If federal funding is not available to satisfy the full amount of this appropriation, then the bill would authorize the DCA to request that a portion of the remainder be appropriated from State funding sources. The DCA would be required to report to the Governor and the Legislature on a bi-annual basis on the spending of program funding.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill may: (1) potentially increase State expenditures attributable to increased administrative costs for the DCA, the Attorney General, and the Department of the Treasury; (2) increase State expenditures attributable to a new gross income tax credit for landlords forgiving unpaid rent; (3) potentially increase State revenues attributable to a court imposing fines on certain non-compliant landlords; and (4) potentially increase local revenues due to certain local units serving as a local housing authority, and thereby a landlord eligible for assistance from the Landlord Emergency Compensation Program established under the bill.

State Impact

Administrative Costs

The bill requires the DCA to make information available on its Internet website to assist landlords with the application process, "engage in substantial effort to enhance awareness among the State's landlords of the ability to apply for assistance," and establish a telephone hotline to help landlords with application completion.

Additionally, the bill permits 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 provisions of the bill concerning the furnishing of information to a collection or credit reporting agency. The bill authorizes a court to 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, which would lead to an indeterminate increase in State revenues.

The bill may also increase administrative costs for the Director of the Division of Taxation in the Department of the Treasury due to the bill's authorization to prescribe forms as necessary to certify that a tenant meets the income limitations. Similarly, the division would ultimately be responsible for processing the tax credits when income taxes are filed.

While the bill may potentially increase State expenditures in the form of administrative costs, language in the bill specifically allows for up to $1.5 million of the $350 million appropriation from the federal government to defray the administrative costs of the program. If $350 million is not available through the CARES Act, then the remainder of this amount would be appropriated from other federal or State funding sources, or both, authorized for coronavirus relief.

Gross Income Tax Credits

The bill grants landlords a gross income tax credit for forgiving the unpaid rent of tenants with a household income of less than 80 percent of the median gross household income of the same size in the region, minus the amount of assistance otherwise received for the unpaid rent. According to U.S. Census Bureau data from 2019, the median household income in New Jersey was $82,545 – 80 percent of which would be $66,036. U.S. Census Bureau data also states that the median gross rent in New Jersey is $1,336 per month for the State's 1,137,834 renter-occupied housing units paying rent. According to a recent estimate by the National Council of State Housing Agencies, between 192,000 and 419,000 renter households in New Jersey are at risk of eviction due to inability to pay rent and the estimated rent shortfall by January 2021 was between $427 million and $832 million.

Without knowing how many of the 192,000 to 419,000 renter households are 80 percent of their regional median gross household income, the OLS is unable to provide a more exact estimate. However, one could assume that renters behind on rent in January 2021 would tend to have a lower taxable year income – which the tax credit is based from. After subtracting the bill's $350 million appropriation from the total unpaid rent, and an additional $1.5 million that is permitted by the bill to defray administrative costs, the remaining rent shortfall based on January 2021 figures would be between $78.5 million and $483.5 million.

However, this is based on January 2021 figures and does not account for future months of unpaid rent under the "assistance period," which is defined as period beginning April 1, 2020 and ending two months following the end of the public health emergency declared pursuant to Executive Order No. 103 of 2020. The unpaid rent figures also do not account for future rental assistance payments on behalf of tenants from other programs. For example, on January 22, 2021, the State received a supplemental appropriation of $344 million for the COVID-19 Emergency Rental Assistance Program from the federal Coronavirus Response and Relief Supplemental Appropriations Act of 2021.

After subtracting these monies, the remaining rent shortfall based on January 2021 figures would be approximately $139.5 million or less. If one assumes that half of this shortfall in rent is attributable to renters at or below 80 percent of the regional median gross household income, the State would be responsible for providing up to $70 million in tax credits to landlords over the three taxable years following the taxable year for which the tax credit is allowed, based off unpaid rent figures from January 2021. The OLS further cautions that this figure assumes nearly every eligible landlord in the State will utilize the tax credit, which is not a utilization rate the OLS can predict.

The OLS also notes that the gross income tax credit for rent forgiveness could potentially reduce evictions and similar legal actions, thereby reducing court fees paid to the New Jersey Courts. The landlord must refrain from evicting or otherwise dispossessing a tenant to obtain the tax credit for unpaid rent. Because this could potentially reduce evictions, eviction filings, and similar legal actions, the bill may reduce court fees paid to the New Jersey Courts. This process of landlords obtaining a gross income tax credit for unpaid rent could also be logistically preferable over the alternative of seeking a legal action as a remedy for unpaid rent.

Additionally, the OLS notes that according to an April 16, 2020 press release by the Executive, 36,000 rental units across the State are within the New Jersey Housing and Mortgage Finance Agency's (NJHMFA) portfolio. It is not immediately clear to the OLS how the tax credit for forgiveness of unpaid rent will interact with NJHMFA's revenue from those rental units.

Local Impact

Finally, 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, eligible housing authorities serving as landlords would be eligible to receive assistance from the program. The OLS is unable to estimate how much unpaid rent is owed to local housing authorities and eligible for compensation under the program.

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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.).