[Second Reprint]

SENATE, No. 3357

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 12, 2021

Sponsored by:
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District 33 (Hudson)
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SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on February 19, 2021.

(Sponsorship Updated As Of: 2/23/2021)

AN ACT addressing certain landlord expenses in response to the COVID-19 pandemic, and making an appropriation.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that:

a. The COVID-19 pandemic and the measures taken to control it have resulted in widespread unemployment and lost income to large numbers of New Jersey tenants;

b. As of June of 2020, New Jersey's unemployment rate exceeds 16 percent;

c. Unemployment and loss of income have rendered many tenants unable to pay rent in whole or in part, placing them at potential risk of eviction following the conclusion of the eviction moratorium adopted through Executive Order No. 106 of 2020;

d. Although Executive Order No. 106, and other tenant protections established during the COVID-19 pandemic appear to be preventing many evictions that might otherwise occur, the tenant protections, combined with the underlying economic circumstances of the pandemic, could result in a widespread loss of rental income, placing landlords in a financially-vulnerable situation;

e. If not addressed, sustained loss of rental income could lead many landlords to defer repairs, reduce maintenance, and potentially abandon their properties, all of which could adversely-effect landlords, families living in rental properties, as well as many neighborhoods throughout the State; and

f. It is, therefore, necessary and in the public interest for the Legislature to prevent evictions as well as property deterioration and abandonment, arising from the temporary loss of tenant and landlord income during the time of the coronavirus pandemic, by enacting legislation to subsidize certain landlord expenses incurred during the time of the COVID-19 pandemic.

2. As used in this act:

"Assistance" means compensation for unpaid rent, provided by the program established pursuant to section 3 of this act, that shall compensate a landlord for the [1]**[**housing costs**]** <u>unpaid rent</u>[1] of the units of all of the landlord's residential tenants in the building or development for which the assistance has been requested during the period that is both within the assistance period and prior to submission of the program application.

"Assistance period" means the 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.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Senate SBA committee amendments adopted February 11, 2021.
[2]Senate floor amendments adopted February 19, 2021.

"Commissioner" means the Commissioner of Community Affairs.

"Department" means the Department of Community Affairs.

[1]["Household income" means the gross income of a tenant household for calendar year 2019, or for January 1, 2020 through June 30, 2020 multiplied by two, whichever is lower.

"Housing costs" means mortgage principal and interest payments, property taxes, homeowner and private mortgage insurance, condominium or common interest community fees, and reasonable maintenance costs, as applicable, paid by a landlord for the landlord's residential rental units, and anticipated maintenance cost increases, applicable to landlords with tenants who have applied security deposit funds against rent pursuant to Executive Order 128 of 2020.]1

"Program" means the Landlord Emergency Compensation Program established by section 3 of this act.

"Program application" means an application for assistance through the program.

3. a. There is established in the Department of Community Affairs the "Landlord Emergency Compensation Program," to provide assistance to a landlord to compensate for the [1][portions of]1 unpaid rent, due during the assistance period, that the landlord's residential tenants have owed the landlord, but have not paid [1][, to the extent that this compensation is necessary to allow the landlord to cover the landlord's housing costs]1. The program shall not provide assistance to the landlord for [1][:

(1) housing costs that, prior to March 9, 2020, the landlord had anticipated covering through funding sources other than rent payments; or

(2) housing costs] <u>the unpaid rent</u>[1] for which the landlord has obtained compensation, or has an outstanding application for compensation, through a different program that, as determined by the commissioner, preempts the landlord from eligibility for assistance payments, including, but not limited to, funding from the Small Landlord Emergency Grant Program established by the New Jersey Housing and Mortgage Finance Agency.

b. The commissioner shall limit eligibility for assistance payments to a landlord that:

(1) as of the date of submission of a program application, is in substantial compliance with the requirements of: the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.); the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.); and the State housing code, adopted by the Department of Community Affairs pursuant to P.L. 1966, c. 168 (C.2A:42-74 et seq.);

(2) as of March 9, 2020, is in substantial compliance with property tax and other tax payment responsibilities; and

(3) has no pending criminal charges.

c. The program shall begin accepting applications as soon as possible following enactment of this act. If a landlord applies for assistance prior to the conclusion of the assistance period, and the landlord's tenants miss one or more rent payments after submission of the program application, then the landlord may apply to the department for one or more additional assistance payments on a quarterly basis through the conclusion of the assistance period. The department may adjust this application schedule as deemed appropriate by the commissioner.

d. The department may prioritize program application approval based on the financial need of the landlord, as determined appropriate by the commissioner. A portion of assistance funding shall be reserved for landlords who own and rent out no more than two housing units.

e. The department shall prepare all application forms, application guidelines, and informational materials necessary for landlords to complete an application, and shall post materials on its [1]Internet[1] website at least 30 days prior to the date on which applications shall be accepted.

4. a. A program application shall state the total amount of rent due from the landlord's residential tenants established in the corresponding leases, the amount paid by the tenants or third parties, if any, the amount unpaid, [1]**[**the landlord's housing costs,**]**[1] the amount of security deposit funding that the landlord's tenants have applied against rent pursuant to Executive Order 128 of 2020, and any other information required by the department for determining financial need.

b. An application shall be accompanied by a form completed by the tenant of each of the landlord's rental units [1]**[**for which the landlord is seeking assistance**]** who has failed to satisfy a rent payment,[1] endorsing the application, which shall include (1) the number of occupants of the unit, (2) a sworn statement of the tenant household's income, and (3) any additional information required by the department.

c. If the tenant of a rental unit is unwilling to complete the form required in subsection b. of this section notwithstanding diligent effort by the landlord, the landlord may attach to the application a certification in such form as shall be determined by the department setting forth (1) the landlord's efforts to obtain tenant endorsement; (2) the household income of the tenant, to the best of the landlord's knowledge; (3) the number of occupants in the rental unit, and (4) any additional information required by the department.

5. a. An assistance payment, once accepted by a landlord, shall be a full settlement of rent due for all of the landlord's residential tenants in the building or development [1][for which the assistance has been requested] who have failed to satisfy a rent payment[1] during the period that is both within the assistance period and prior to submission of the program application. By accepting an assistance payment, the landlord shall also waive any late or other fees charged to residential tenants as a result of the nonpayment of rent during the period that is both within the assistance period and prior to submission of the program application. The acceptance of the assistance payment shall constitute a settlement of these costs even though they may not be fully compensated through the assistance payment.

b. Upon the provision of an assistance payment, the commissioner shall notify the landlord's tenants of the protections provided to them as a consequence of the landlord's receipt of assistance.

c. A landlord shall not accept a delinquent rent payment from a residential tenant if the rent payment has been covered by an assistance payment.

d. A landlord receiving assistance or awaiting the department's response to a program application, shall not initiate an eviction proceeding, or complete a previously-initiated eviction proceeding, for any unpaid rent balances, or late or other fees, owed by a residential tenant for rent due during the period that is both within the assistance period and prior to submission of the program application. This subsection shall protect such tenants from an eviction action for nonpayment or habitually late payment of rent during this period.

e. A landlord initiating an eviction action shall provide documentation on a form to be prepared and adopted by the Administrative Director of the Courts that the landlord is not prohibited from initiating the action by any provision of this act.

[2]6. a. 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 for households of the same size within the housing region in which the housing is located, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., 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 P.L. , c. (C.) (pending before the Legislature as this bill). A landlord shall not be awarded a tax credit pursuant to this section unless the landlord has already applied for assistance,

and has either been denied the assistance, or has obtained assistance in an amount insufficient to fully compensate the landlord for rent unpaid by the landlord's residential tenants during the assistance period. A landlord awarded an income tax credit pursuant to this subsection shall:

(1) refrain from evicting or otherwise dispossessing a tenant of a property on behalf of which the credit was requested for nonpayment or habitually late payment of rent due during the assistance period;

(2) permanently forgive the tenant or tenants from paying the same percentage of unpaid rent owed by the tenant or tenants during the assistance period as the percentage of unpaid rent owed to the landlord's during the assistance period, for the same property, that is not accommodated by assistance payments, and income tax credits issued pursuant to this subsection, combined. The landlord shall retain the ability to obtain the unpaid rent not covered by the income tax credit or by assistance payments, and owed by the tenant or tenants during the assistance period, through a monetary judgment action.

b. Upon obtaining an award of a tax credit pursuant to subsection a. of this section, the landlord shall notify the landlord's tenants of the protections provided to the tenants as a consequence of the landlord's receipt of the tax credit.

c. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed pursuant to the "New Jersey Gross Income Tax Act" N.J.S.54A:1-1 et seq. for a taxable year shall be as prescribed by the Director of the Division of Taxation in the Department of the Treasury. The amount of the credit applied under this section against the tax imposed for a taxable year, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than zero. The amount of unused credit allowable under this section may be carried forward, if necessary, to the three taxable years following the taxable year for which the tax credit is allowed.

d. A business entity that is classified as a partnership for federal income tax purposes shall not be allowed the credit directly, but the amount of credit of a taxpayer in respect of a distributive share of partnership income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year. A taxpayer that is a New Jersey S corporation shall not be allowed the credit directly, but the amount of credit of a taxpayer in respect of a pro rata share of S corporation income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the New Jersey S corporation that is equal to the taxpayer's share,

whether or not distributed, of the total pro-rata share of S corporation income of the New Jersey S corporation for its privilege period ending within or with the taxpayer's taxable year.

e. The Director of the Division of Taxation in the Department of the Treasury is authorized to adopt rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and prescribe forms as necessary to implement this section. These forms may include, but shall not be limited to, forms necessary to certify that a tenant meets the income limitations established pursuant to subsection a. of this section.[2]

[2]7. Each landlord that is eligible to receive assistance pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), with the exception of a property owner who is the landlord of only one owner-occupied premises with not more than two rental units, shall be required to apply for, and pursue in good faith, compensation in all forms permitted by P.L. , c. (C.) (pending before the Legislature as this bill), to the extent necessary to account for unpaid rent owed to the landlord on residential property during the assistance period. All such applications shall cover and include all tenants of the eligible landlord who reside in any and all rental dwellings owned or operated by that landlord and who are in arrears or have been unable to pay the rent on time during the assistance period. An eligible landlord who fails to apply for compensation as required pursuant to this section, who fails to pursue such application in good faith, or who refuses to accept any or all compensation for which said landlord is eligible, shall not be permitted to initiate eviction proceedings, or proceed with pending eviction proceedings, based solely upon habitually late payment of rent or upon non-payment of rental arrearages accruing solely during the assistance period, and shall immediately withdraw any and all such pending eviction matters, provided, however, that such landlords shall remain entitled to pursue recovery of the unpaid rent by filing an action in Superior Court for entry of a monetary judgment with applicable interest, except as otherwise prohibited by the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).[2]

[2][6.] 8.[2] a. The Department of Community Affairs shall, as soon as practicable following the enactment of this act, prepare and make available, on its Internet website, information for landlords on (1) when assistance applications shall 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 deemed necessary by the commissioner. This information shall be made available in English, Spanish, and any other languages determined necessary by the commissioner.

b. The department shall engage in a substantial effort to enhance awareness among the State's landlords of the ability to apply for assistance. Once assistance applications are made available, the department shall 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. The department shall maintain the telephone hotline for the entire period that the department continues to accept assistance applications.

[2] **[**7.**]** 9.**[2]** If a landlord has submitted a program application to the department, but has not yet obtained an assistance payment, or a denial of an assistance payment, the landlord may assert an affirmative defense to a foreclosure action initiated against any residential rental property owned by the landlord. This section shall exclusively apply to a landlord whose principal residence is in the State and who, together with immediate family members, partners, or other related entities, owns no more than 50 rental units in the State.

[2] **[**8.**]** 10.**[2]** An intentional misrepresentation by a landlord of any information to obtain an assistance payment shall constitute a crime of the fourth degree in addition to other applicable penalties.

[2] **[**1 9.**]** 11.**[2]** a. (1) A landlord shall not furnish 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, or shall report the rental payment as current. This paragraph shall not:

(a) 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

(b) limit the ability of a landlord to share information with the landlord's attorney or property management company, or to notice the tenant in compliance with the Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.).

(2) As a result of any record or information reflecting a tenant's non-payment of rent during the assistance period, a landlord shall not:

(a) refuse to rent to a tenant; or

(b) place, or disseminate a tenant's information for the purpose of placing, a tenant on a list for the use of other landlords.

b. In response to a complaint to the Attorney General from a tenant, or on the Attorney General's independent initiative, the Attorney General may bring an action alleging a landlord has

violated the provisions of subsection a. of this section concerning the furnishing of information to a collection or credit reporting agency. Regarding a first violation, the court shall 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 with subsection a. of this section has occurred, a court of competent jurisdiction may:

(1) order the non-compliant landlord to retract the report of debt provided to the collection or credit reporting agency, bureau, or data collection facility;

(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 to a collection or credit reporting agency, bureau, or data collection facility;

(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, of the efforts made in that regard; 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.

c. 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 act, the landlord shall not be subject to the penalty provisions of this section, except for an order to retract the report pursuant to paragraph (1) of subsection b. of this section.[1]

[1][9.] [2][10.] 12.[2] a.[1] There is appropriated from funds provided to the State by the United States government under the "Coronavirus Aid, Relief, and Economic Security Act," [1][Pub. Law 116-136] Pub.L.116-136[1], to the Department of Community Affairs the sum of [1][$300,000,000] $350,000,000[1] for assistance under this program, of which no more than $1,500,000 may be used by the department to defray the administrative costs of the program. If [1][$300,000,000] $350,000,000[1] is not available through the "Coronavirus Aid, Relief, and Economic Security Act," [1][Pub. Law 116-136] Pub.L.116-136[1], then the remainder of this amount shall be appropriated from other

federal funding authorized for coronavirus relief as it becomes available. If federal funding is not available to satisfy the full amount of this appropriation, then the Commissioner of Community Affairs may notify the State Treasurer and the Joint Budget Oversight Committee of the Legislature of the deficiency and may request that the Legislature appropriate a portion of the remainder from the General Fund, or other available State funding sources, for the purposes of the program.

[1]b. On a bi-annual basis, the commissioner shall provide a report to the Legislature, in accordance with section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the Governor, which report shall detail the amount of funding spent pursuant to the program, the amount of program funding that is spent to assist residential rental units in each municipality, and other information that the commissioner deems necessary. The commissioner shall provide a final report pursuant to this subsection no later than six months following the complete expenditure of funds appropriated pursuant to subsection a. of this section.[1]

[2][[1]11.] 13.[2] Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the commissioner may adopt, immediately upon filing with the Office of Administrative Law, regulations that the commissioner deems necessary to implement the provisions of this act. The regulations adopted by the commissioner may, among other purposes, be used to limit the availability of the program as the commissioner deems necessary to comply with the "Coronavirus Aid, Relief, and Economic Security Act," Pub.L.116-136, and other federal law.[1]

[1][10.] [2][12.[1]] 14.[2] This act shall take effect immediately.