

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3357

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 11, 2021

The Senate Budget and Appropriations committee reports favorably Senate Bill No. 3357 with committee amendments.

As amended by the committee, this bill would establish the “Landlord Emergency Compensation Program” as a program in the Department of Community Affairs (“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 DCA has determined to preempt the landlord from eligibility.

The bill requires DCA to limit eligibility for assistance payments to landlords who (1) have no pending criminal charges, (2) are in substantial compliance with building and housing code responsibilities upon application submission, and (3) are in substantial compliance with tax payment responsibilities as of March 9, 2020.

The program would begin accepting applications as soon as possible following enactment of this bill. To address circumstances in which 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, the bill would not prohibit DCA from accepting additional program applications from the same landlord. The bill authorizes DCA to prioritize program application approval based on the financial need of the landlord as determined appropriate.

The bill directs that program applications would be required to state the total amount of rent due for the rental unit as established in the lease, the amount paid by the tenant or third parties, if any, the amount unpaid, and any other information required by DCA.

The bill would require an application to be accompanied by a form completed by the tenants of the landlord's rental units endorsing the application, and including the number of occupants of the unit, and any additional information required by DCA. If the tenant is unwilling to complete the form despite a diligent effort by the landlord, the landlord may attach to the application a certification setting forth: (1) the landlord's efforts to obtain tenant endorsement, (2) the number of occupants in the rental unit, and (3) any additional information required by DCA.

The bill requires that the assistance payment, once accepted by a landlord, would be a full settlement of rent due for all of the landlord's residential tenants in the building or development during the period both within the assistance period and prior to submission of the program application. By accepting an assistance payment, the landlord would also waive any late fees charged to residential tenants as a result of rent nonpayment in that time. A landlord receiving assistance or awaiting DCA's response to a program application would be prohibited from initiating an eviction proceeding, or completing a previously-initiated eviction proceeding, for any unpaid rent balances owed for rent due during that time. Upon the provision of an assistance payment, the bill would require the commissioner to also notify the landlord's tenants of the protections provided to them as a consequence of the landlord's assistance payment. A landlord would be prohibited from accepting a delinquent rent payment from a tenant if it has been covered by an assistance payment. A landlord initiating an eviction action for balances due during the assistance period would be required to provide documentation on a form to be prepared and adopted by the Administrative Director of the Courts that they are not prohibited from initiating the action by any provision of the bill.

As soon as practicable following enactment, the bill directs 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 DCA deems necessary. This information would be made available in English, Spanish, and any other languages determined necessary. Once assistance applications are made available, 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.

Under the bill, if a landlord has submitted a program application, but has not yet obtained an assistance payment, or a denial of assistance, the landlord would be authorized to assert an affirmative defense to a foreclosure action initiated against any residential rental property owned by the landlord. This protection, however, would 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.

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 Anti-Eviction Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.).

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 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.

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 DCA to request that a portion of the remainder be appropriated from State funding sources. DCA would be required to report to the Governor and the Legislature on a bi-annual basis on the spending of program funding.

COMMITTEE AMENDMENTS

The amendments to the bill would make the following changes:

- Provide that assistance payments would compensate a landlord for unpaid rent, instead of housing costs, accumulated during the assistance period;
- Establish restrictions on the distribution of information on the non-payment of rent by a tenant during the assistance period;
- Adjust the appropriation from \$300 million to \$350 million;
- Provide DCA with authority to promulgate regulations, and with authority to limit application of the program as necessary to comply with the CARES Act and other federal law;
- Provide DCA with a bi-annual reporting responsibility regarding the spending of program funding; and
- Make technical changes to the bill.

FISCAL IMPACT:

The Office of Legislative Services concludes that the bill may (1) potentially increase State expenditures attributable to increased administrative costs for the Department of Community Affairs (DCA) and the Attorney General and may (2) 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 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 to investigate certain complaints outlined in the bill. The bill authorizes a court to impose fines, up to \$2,500 on the third and each subsequent violation on non-compliant landlords, which would lead to an indeterminate increase in State revenues.

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.