SENATE, No. 3583



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED MARCH 22, 2021

Sponsored by:

Senator BRIAN P. STACK

District 33 (Hudson)

SYNOPSIS

 Concerns eviction and homelessness prevention; provides financial assistance to residential landlords and tenants in response to COVID-19 pandemic; and making appropriations.

CURRENT VERSION OF TEXT

 As introduced.



An Act addressing eviction and homelessness prevention and providing assistance to residential landlords and tenants in response to COVID-19, and supplementing Title 52 of the Revised Statutes.

 Be It Enacted by the Senate and General Assembly of the State of New Jersey:

 1. The Legislature finds and declares that:

 a. The mortal threat posed by the COVID-19 pandemic compelled the Governor and Legislature to take drastic but necessary action. Executive Order No. 103 of 2020 effectively shut down the New Jersey economy on March 9, 2020, in order to hinder the rapid spread of the virus and to limit as much as possible the number of infections, severe illnesses, and deaths. At the same time, the Governor and Legislature enacted P.L.2020, c.1 (C.2A:18-59.3) and implemented a moratorium on evictions, so as to ensure that households would be able to shelter in place and eliminate the threat posed by displacement, overcrowding, and the resultant spread of the virus.

 b. The foregoing measures caused severe but unavoidable economic difficulties, which have deeply affected the overall well-being of millions of New Jersey residents. Tenants, who in general have substantially lower-incomes and far less wealth than homeowners, have been disproportionately affected: a large and growing number of them immediately became and remain unemployed or underemployed. This is especially so for lower-income people of color, who are predominantly tenants and who continue to be victimized by systemic and structural racism, which has left them severely disadvantaged and extremely vulnerable to health emergencies and economic downturns.

 c. Millions of jobs in our State and elsewhere have been permanently lost, and only around half of the total number of jobs abruptly interrupted by the virus-driven shutdown have returned. The general consensus is that it will take many months or even years for the devastatingly high unemployment to recede, and for the economy to recover to anywhere near its pre-pandemic level.

 d. As a result, not only will hundreds of thousands of tenants in our State be unable to pay all or even part of the rental arrearages caused by the pandemic when the moratorium ends, but these tenants will also find it extremely difficult, or even impossible, to make their current, ongoing monthly rental payments once they resume.

 e. An overwhelming number of struggling tenant households, disproportionately black and brown, will therefore be at risk of eviction for non-payment of all or part of their regular rent shortly after the moratorium is lifted. Combining the number of struggling tenants with the number of people at risk of displacement if the arrearage issue is not addressed, it becomes clear that the resulting number of evictions, and the resulting overcrowding will create conditions likely to fuel the resurgence and spread of COVID-19, and threaten the health, safety, and lives of their families, communities, and the society at large.

 f. In Executive Order No. 106 of 2020, the Governor expressly stated that protection and preservation of personal and public health was the primary reason driving the imposition of the economic shutdown and eviction moratorium, a health-centered concern echoed and reinforced by the national eviction moratorium subsequently mandated by the federal Centers for Disease Control and Prevention. The need to strictly limit eviction, now and for the foreseeable future, is undeniable.

 g. It is, therefore, necessary for the Legislature to assist landlords who have suffered deep economic losses, and, at the same time, make efforts to assist the many tenants who need help as a result of this crisis, in order to ensure some measure of security and stability for their families and communities; provide landlords with the restored rental income stream required to safely and efficiently operate their buildings; and prevent a resurgence of COVID-19 that will threaten the health and safety of tenants, landlords, and the public at large.

 2. As used in P.L. , c. (C. ) (pending before the Legislature as this bill):

 “Assistance” means one or more cash payments, tax credits, or any other form of compensation for unpaid rent, provided by the program established pursuant to section 4 of P.L. c. (C. ) (pending before the Legislature as this bill).

 “Commissioner” means the Commissioner of Community Affairs.

 “Covered period” means the period during which a public health emergency exists as declared by the Governor in Executive Order No. 103 of 2020, as extended, and one year following the conclusion of this period.

 “Deep subsidy” means a rental housing subsidy in an amount sufficient to allow a limit in the tenant’s share of the monthly rent to a percentage of the tenant’s income, and that can be adjusted to maintain that percentage should the tenant’s income change.

 “Department” means the Department of Community Affairs.

 “Eviction moratorium” or “moratorium” means the moratorium on involuntary eviction or displacement established by Executive Orders Nos. 103 and 106 of 2020, and any other related directives.

 “Household income” means the combined income of all household members for the 12 months prior to the filing of an application for assistance or protection.

 “Low income household” means a household with a total current annual household income equal to 50 percent or less of the area median income for a household of the same size and composition.

 “Moderate income household” means a household with a total current gross annual household income in excess of 50 percent but less than 80 percent of the area median income for a household of the same size and composition.

 “Non-emergency eviction” means any eviction action against a residential tenant which would have been permitted under State law, prior to the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), but does not include eviction actions against a residential tenant who has physically endangered other tenants or the landlord. Self-quarantining due to a COVID-19 infection or exposure is not an endangering act.

 “Shallow subsidy” means a rental housing subsidy provided in an amount based on the percentage of the fair market rent of the unit, depending on size and location.

 “Very low income household” means a household with a total current annual household income less than or equal to 30 percent of the area median income for a household of the same size and composition.

 3. a. Notwithstanding any other law to the contrary, evictions shall be prohibited for nonpayment or habitual late payment by a residential tenant of any and all rent arrearages which accrued during the covered period and that remain due and owing on the date that the covered period ends. Payments made by a tenant after the covered period shall be credited first to the current month’s rental obligation, and any balance shall be credited to any arrearage owed by the tenant.

 b. A landlord shall remain entitled to pursue a money judgment against a residential tenant for any and all lawfully due and owing unpaid rent, for which compensation is not otherwise provided by any public or private source, by filing an action in Superior Court. A tenant in such an action shall retain the right to assert any and all counterclaims, set-offs, legal defenses, affirmative defenses, and equitable defenses that would otherwise be available to the tenant. No court shall accept any other nonpayment or late payment eviction filings during the covered period related to residential evictions.

 c. Notwithstanding any other provision of law to the contrary, non-emergency evictions shall be prohibited during the covered period. All judgments for possession and warrants for removal entered in non-emergency eviction actions during the covered period, including those entered pursuant to stipulation or consent order, shall be null, void, and unenforceable, and the corresponding actions shall be expunged from the court records. No court shall accept any other non-emergency eviction filings during the covered period.

 d. A landlord shall not impose any late fees for rent payments not made, or only partially made, during the covered period.

 e. A landlord shall not increase the rent on a residential rental unit during the covered period.

 4. a. There is established in the Department of Community Affairs the “Tenant COVID Emergency Rental Arrearage Program,” to provide assistance to residential tenants for unpaid rents which have accrued during the covered period, and which are due and owing by residential tenants to their landlords, but have not been paid. The program shall not provide assistance to the tenant for unpaid rent 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. Assistance shall be provided on behalf of an eligible tenant only if:

 (1) as of the date of submission of a program application, the landlord 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, the landlord is in substantial compliance with property tax and other tax payment responsibilities; and

 (3) the landlord has no pending criminal charges.

 c. The program shall begin accepting applications from tenants as soon as possible following enactment of P.L. , c. (C. ) (pending before the Legislature as this bill). A landlord may apply for assistance on behalf of a tenant as long as the tenant is in agreement with the landlord doing so, and as long as the tenant for whom the application is filed meets all of the mandatory eligibility, verification, and attestation requirement of the program. If a tenant applies for assistance prior to the conclusion of the covered period, and the tenant misses one or more rent payments after submission of the program application, then the tenant may apply to the department for one or more additional assistance payments on a quarterly basis through the conclusion of the covered period. The department may adjust this application schedule as deemed appropriate by the commissioner.

 d. The department shall prioritize program applications based upon the financial need of the tenant, and may prioritize program application approval based on the financial need of the landlord, as determined by the commissioner. A portion of assistance funding shall be reserved for the tenants of 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 tenants to complete an application, and shall post materials on its internet website.

 f. Within 15 days of the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), a landlord shall provide each of its tenant households with written notice of the establishment of the program. This notice shall provide information to the tenant on how to learn more about the program and obtain assistance with the application process.

 g. The department shall develop and fund a comprehensive public information plan to ensure that eligible tenants are aware of the assistance provided by the program, and shall assist tenants with the filing and completion of the application process to the degree required for the tenant to do so. This plan shall include but not be limited to public service announcements, notices about the program in governmental notices and utility providers billings, notices to landlords as to how to assist their tenants in applying for the program, and outreach to underserved populations.

 5. 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; the amount of security deposit funding that the landlord’s tenants have applied against rent pursuant to Executive Order No. 128 of 2020; and any other information required by the department for determining financial need.

 b. An application shall include a certification by the tenant as to: (1) the number of occupants of the unit, (2) the tenant household’s income, (3) a brief statement by the tenant explaining how the pandemic affected the tenant’s ability to pay rent, and (4) any other information required by the funding sources from which the program payments are intended to be made. The commissioner shall make the forms and related verification requirements as simple as possible, shall require the minimum information permissible by those funding sources, and shall permit self-certification and verification to the greatest extent possible.

 c. A tenant seeking assistance for rental arrearages pursuant to this program shall, except for good cause shown, cooperate and comply with the reasonable, good faith information and related requests made by the department and the landlord in order to facilitate the application process, provided that the landlord also cooperates and complies with the department and tenant throughout the application process. Notwithstanding the prohibition against non-payment eviction actions for COVID-19-related rental arrearages set forth in section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), a landlord that is compliant with the landlord’s obligations pursuant to this subsection may commence eviction proceedings for non-payment of the rent in question against a tenant who unreasonably fails or refuses to comply without good cause.

 6. a. Assistance in the form of cash, tax credits, or other means, shall be provided to the landlord in an amount equal to 70 percent of the amount of the arrearages as determined by the department, without limitation on the landlord’s right to pursue a money judgment for the lawfully due balance as provided for in section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

 b. Upon the provision of assistance as described in subsection a. of this section, the commissioner shall notify the tenant 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. In accordance with the provisions of section 3 of P.L. , c.    (C. ) (pending before the Legislature as this bill), 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 covered period. 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 the eviction limitations provided by section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), or any provision of P.L. , c. (C. ) (pending before the Legislature as this bill).

 7. 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, and who does not receive cash assistance covering the percentage of arrearages authorized by this program, shall be provided with assistance by the department in the form of an allowed 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 assistance that the landlord is eligible to receive under the program for a tenant meeting the income qualifications provided in this subsection during the covered period minus the amount of assistance and other preempting compensation provided to the landlord, or for which the landlord has an outstanding application, for the same property. A landlord shall not be awarded a tax credit pursuant to this section unless the tenant has already applied for assistance, the landlord has with due diligence and in good faith assisted the tenant with regard to filing and completing the application, and the tenant has either been denied the assistance, or has obtained assistance in an amount insufficient to compensate the landlord for a significant portion of the rent unpaid by the tenant meeting the income qualifications provided in this subsection during the covered period. A landlord allowed an income tax credit pursuant to this subsection shall:

 (1) In accordance with the provisions of section 3 of P.L. , c.    (C. ) (pending before the Legislature as this bill), 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 covered period;

 (2) permanently forgive the tenant or tenants from paying the same percentage of unpaid rent owed by the tenant or tenants during the covered period as the percentage of unpaid rent owed to the landlord’s during the covered 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 covered 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 the S corporation’s 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, in consultation with the commissioner, 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.

 8. a. The Department of Community Affairs shall, as soon as practicable following the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), 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 to be 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.

 9. 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.

 10. a. The Commissioner of Community Affairs shall rename the current “Homelessness Prevention Program” established pursuant to the provisions of P.L.1984, c.180 (C.52:27D-280 et al.), as the “Eviction and Homelessness Prevention Program.”

 b. The commissioner shall revise and amend the "Homeless Prevention Program Regulations" established pursuant to chapter 41 of Title 5 of the New Jersey Administrative Code to meet or provide for the following:

 (1) the regulations shall be renamed the “Eviction and Homelessness Prevention Program Regulations”;

 (2) a household shall be eligible to participate in the program if, due to reasons beyond the household’s control, 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 shall 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 shall 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 income and low income households;

 (5) a household shall 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) eligible households shall be awarded grants for periods of up to two years, depending upon the person’s or household’s particular circumstances. The department shall provide assistance along a continuum based upon the income level of the tenant household, and shall include deep subsidies, shallow subsidies, and flat amounts. Such grants may be renewed to prevent eviction or homelessness. The commissioner shall prepare a detailed guidance covering the amount and duration of such grants, in accordance with the following guidelines and principles:

 (a) for a very low income household, a deep subsidy shall be provided in the amount necessary to limit the household’s share of ongoing rent to not more than 40 percent of the household’s income;

 (b) for a low income household, a shallow subsidy shall be provided in the amount necessary to limit the household’s share of ongoing rent to not more than 40 percent of the household’s income, provided, however, that the amount of any such subsidy shall not exceed $800 per month; and

 (c) for a moderate-income household, assistance in the form of a flat monthly grant of $250 shall be provided to the household if the household pays more than 50 percent of the household’s income as ongoing rent.

 (7) 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 as a result of reasons beyond the household’s control, the household’s income and family situation shall be reevaluated in light of the changed conditions, and the person or household shall be placed in a different assistance tier, if necessary, to prevent eviction; and

 (8) during the course of the payment period, a participant household shall certify the household’s current income once every two months, using a one-page form to be developed by the department, including any necessary attachments. Beginning the month following receipt of a certification, the department shall 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 shall not require a subsidy adjustment.

 11. There is established within the Department of Community Affairs the “NJ Early Intervention Eviction Prevention Program,” which shall include the following components:

 a. Within 30 days of the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), the department shall establish an “Office of Eviction Prevention,” which shall be responsible for the: (1) identification of all federal, State, local, and other sources of financial assistance which are intended or could be used to prevent the eviction of residential tenants, including but not limited to programs which provide both deep subsidies and shallow subsidies; (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, especially in relation to eligibility requirements and the need for addition to, or revision of, subsidy programs so as to provide appropriate assistance of various sorts and in various amounts to households at different income levels. This office shall be responsible for the compilation, publication, and ongoing update of this information, and shall also be responsible for identifying and training at least one non-profit, community-based organization in each county with regard to the availability of and means of accessing such financial assistance by at-risk tenants.

 b. Also within 30 days of the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), the department shall establish the “NJ Eviction Prevention Mediation Program,” which shall operate in a manner similar to the “NJ Foreclosure Mediation Program,” except as otherwise established herein. In addition to facilitating the provision of mediation in the form and for the purposes outlined below, it shall be the responsibility of the program to ensure that participating tenants are provided with legal advice and assistance if they are not otherwise represented or advised by counsel. The department shall contract with a non-profit provider or providers in each county for the purpose of conducting the mediation sessions, providing the necessary advice regarding tenants’ rights, and also providing the necessary legal assistance. Each such provider shall be responsible for employing a sufficient number of mediators, in-house attorneys, and experts in tenants’ rights to ensure that mediation sessions are conducted in a timely fashion. The department shall be responsible for ensuring that all mediators, attorneys, and tenants’ rights experts are appropriately trained, and that such training is ongoing to ensure that up-to-date assistance is provided.

 c. At least 21 days prior to the filing of an eviction complaint for non-payment of rent which has accrued subsequent to the end of the moratorium period, a landlord shall, using forms prepared by the department, notify both the department and the affected tenant that such an eviction filing may be necessary. If the matter is not resolved in accordance with the procedures outlined in subsections d. through j. of this section, and a summary dispossess complaint is subsequently filed, a copy of this notice shall be attached to the complaint. Failure to serve and attach the required notice shall result in dismissal of the complaint.

 d. Within seven days of receipt of this notice, the department shall contact both parties and establish a date and time for the convening of an assisted eviction prevention mediation session, which shall take place no later than 16 days subsequent to receipt of the notice, and prior to the filing of an action for eviction.

 e. Eviction prevention mediation sessions shall be conducted electronically, on an agreed upon day at and agreed upon time, via a process that allows all parties, as well as the mediator and any other participants, to see and hear each other, unless all parties and participants agree that the session will be conducted in person. In person eviction prevention mediation sessions shall not be conducted in the courthouse or other government building. All such sessions shall be conducted at schools, churches, non-profit office facilities, or other appropriate locations within five miles of the courthouse. All such sessions shall be scheduled at times agreed upon and convenient to all parties, including evenings and weekends.

 f. A knowledgeable, trained representative of the Office of Eviction Prevention shall be present at each scheduled mediation session, in order to facilitate resolution of all payment-related issues.

 g. The purposes and goals of the mediation process shall be: (1) to identify all existing and potential legal issues and tenants’ rights that may have an impact upon the jurisdiction of the court or otherwise affect the possible outcomes of any summary dispossess proceeding, (2) to identify all existing or potential issues that do or may affect the participating tenants ability to make rental payments in a timely fashion and in full, (3) to identify, prepare and implement an affordable payment plan that will address all payment issues so identified, in order to insure to the greatest extent possible that rent will be timely paid, (4) identify all potential sources of one-time, short and long-term funding, including the use of deep subsidies and shallow subsidies, which will facilitate successful creation and implementation of such a plan, (5) establish an implementation plan which identifies and provides the hands-on assistance tenants will need to pursue and apply to the particular funding sources identified as necessary, and (6) produce a written agreement embodying and memorializing all of the above.

 h. It shall be the obligation of all parties to undertake the mediation process in good faith and with the intent of reaching a reasonable resolution of all issues involved. Failure by a landlord to negotiate and participate in good faith shall be a defense to and action for eviction; failure to do so by a tenant may lead to an eviction filing and displacement.

 i. If the mediation is successful, and the parties reach an agreement with regard to a reasonable and affordable payment plan, a Stipulation of Settlement will be prepared, which stipulation shall be in the form established by the department. The Stipulation of Settlement shall further provide that, in the event a tenant fails to abide by the payment plan, the landlord may institute a summary dispossess proceeding. If the matter cannot be resolved through mediation, and the amounts claimed due are not paid, the landlord may commence a summary dispossess proceeding against the tenant.

 j. In any such civil action for non-payment of rent, a tenant shall be advised of the tenant’s right to request a two-week adjournment, which shall be granted as a matter of right. At least one week prior to the trial of any matter involving non-payment of rent, the tenant shall again be advised of all rights provided by P.L. , c.    (C.        ) (pending before the Legislature as this bill), as well as all potential sources of funding that may be available to reduce the tenant’s obligation, and offered the opportunity to engage in a final mediation session on or prior to the trial date. Any and all payment arrangements subsequently agreed to shall be reviewed by the court, and shall not be approved unless the court finds that the tenant clearly understood the tenant’s rights as well as the terms of the agreement.

 12. The following sums are appropriated 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 “Tenant COVID Emergency Rental Arrearage Program” the sum of $350,000,000; for the “Eviction and Homelessness Prevention Program” the sum of $350,000,000; for the Office of Eviction Prevention the sum of $5,000,000; and for the “NJ Eviction Prevention Mediation Program” the sum of $20,000,000. The sum of $20,000,000 is appropriated to the department from the same funds, as described above, provided to the State by the United States government for the purpose of funding those actions needed to be taken by the department to effectively implement and administer the rental arrearage and homelessness prevention programs. Additional federal funding for emergency rental assistance related to the COVID-19 pandemic shall be appropriated to the foregoing programs as it becomes available. Households otherwise ineligible for assistance using federal funds shall be assisted with State funds.

 13. This act shall take effect immediately.

STATEMENT

 This bill would address eviction and homelessness prevention, and would provide financial assistance to residential landlords and tenants in response to COVID-19 pandemic.

 The bill would prohibit eviction for nonpayment or habitual late payment by a residential tenant of any rent arrearages accrued during the covered period and that remain due and owing on the date that the covered period ends. The bill defines the “covered period” as the period during which a public health emergency exists as declared by the Governor in Executive Order No. 103 of 2020, as extended, and one year following its conclusion. Rent payments made after the covered period would be credited first to the current month’s rental obligation, and any balance shall be credited to any arrearage.

 The bill would permit a landlord to pursue a money judgment against a residential tenant for any lawfully due unpaid rent by filing an action in Superior Court.

 Non-emergency evictions would also be prohibited during the covered period. All judgments for possession and warrants for removal entered in non-emergency eviction actions during the covered period would be null, void, and unenforceable, and the corresponding actions would be expunged from the court records. No court would be authorized to accept any nonpayment, late payment, or other non-emergency eviction filings during the covered period.

 The bill would prohibit a landlord from imposing any late fees for rent payments not fully made during the covered period. A landlord would be prohibited from increasing the rent on a residential rental unit during the covered period.

 The bill would establish in the Department of Community Affairs the “Tenant COVID Emergency Rental Arrearage Program,” to provide assistance to residential tenants for unpaid rents which have accrued during the covered period, and which are due and owing by residential tenants to their landlords, but have not been paid. The program would not provide assistance to the tenant for unpaid rent 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.

 Assistance would be provided on behalf of an eligible tenant only if: (1) as of the date of submission of a program application, the landlord 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; (2) as of March 9, 2020, the landlord is in substantial compliance with property tax and other tax payment responsibilities; and (3) the landlord has no pending criminal charges.

 The Tenant COVID Emergency Rental Arrearage Program would begin accepting applications from tenants as soon as possible following the enactment of the bill. A landlord would be able to apply for assistance on behalf of a tenant as long as the tenant is in agreement with the landlord doing so, and meets all of the mandatory eligibility, verification and attestation requirement of the program. If a tenant applies for assistance prior to the conclusion of the covered period, and the tenant misses one or more rent payments after submission of the program application, then the tenant would be permitted to apply for one or more additional assistance payments on a quarterly basis through the conclusion of the covered period. The department would be able to adjust this application schedule as deemed appropriate by the commissioner.

 The department would prioritize program applications based upon the financial need of the tenant, and prioritize program application approval based on the financial need of the landlord. A portion of assistance funding would be reserved for the tenants of landlords who own and rent out no more than two housing units. Within 15 days of the enactment of the bill, a landlord would be required to provide each of its tenant households with written notice of the establishment of the program.

 The bill would direct the department to develop and fund a comprehensive public information plan to ensure that eligible tenants are aware of the assistance provided by the program, and assist tenants with the filing and completion of the application process.

 A program application would 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, the amount of security deposit funding that the landlord’s tenants have applied against rent pursuant to Executive Order No. 128 of 2020, and any other information required by the department for determining financial need.

 An application would include a certification by the tenant as to (1) the number of occupants of the unit, (2) the tenant household’s income, (3) a brief statement or by the tenant explaining how the pandemic affected their ability to pay rent, and (4) any other information required by the funding sources from which the program payments are intended to be made.

 A tenant seeking assistance for rental arrearages through this program would, except for good cause shown, be required to cooperate and comply with the reasonable, good faith information and related requests made by the department and the landlord in order to facilitate the application process, provided that the landlord also cooperates and complies with the department and tenant throughout the application process. Notwithstanding the prohibition against non-payment eviction actions for COVID-19-related rental arrearages set forth in the bill, a landlord that is compliant with the landlord’s obligations would be authorized to commence eviction proceedings for non-payment of the rent in question against a tenant who unreasonably fails or refuses to comply without good cause.

 Assistance in the form of cash, tax credits, or other means, would be provided to a landlord in an amount equal to 70 percent of the amount of the arrearages as determined by the department, without limitation on the landlord’s right to pursue a money judgment for the lawfully due balance. Upon the provision of assistance, the commissioner would notify the tenant of the protections provided to them as a consequence of the landlord’s receipt of assistance. A landlord would not be permitted to accept a delinquent rent payment from a residential tenant if the rent payment has been covered by an assistance payment. A landlord initiating an eviction action would be required to 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 the eviction limitations provided by the bill.

 The bill would permit a landlord for one or more residential units occupied by a low- or moderate-income tenant, and who does not receive cash assistance covering the percentage of arrearages authorized by this program, to be provided with assistance in the form of 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 assistance that the landlord is eligible to receive under the program for a tenant meeting the income qualifications provided in this subsection during the covered period minus the amount of assistance and other preempting compensation provided to the landlord, or for which the landlord has an outstanding application, for the same property. A landlord would not be awarded a tax credit through the bill unless the tenant has already applied for assistance, the landlord has with due diligence and in good faith assisted the tenant with regard to filing and completing the application, and the tenant has either been denied the assistance, or has obtained assistance in an amount insufficient to compensate the landlord for a significant portion of the rent unpaid by the tenant meeting the income qualifications.

 A landlord allowed an income tax credit would be required to permanently forgive the tenant from paying the same percentage of unpaid rent owed by the tenant during the covered period as the percentage of unpaid rent owed to the landlord’s during the covered period, for the same property, that is not accommodated by assistance payments, and income tax credits issued pursuant to this subsection, combined. The landlord would 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 covered period, through a monetary judgment action.

 The Department of Community Affairs would be required to prepare and make available, on its Internet website, information for landlords on (1) when assistance applications would 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 would be made available in English, Spanish, and any other languages determined by the commissioner to be necessary.

 The department would be required to 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 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. The department would maintain the telephone hotline for the entire period that the department continues to accept assistance applications.

 If a landlord submits a program application to the department, but has not yet obtained an assistance payment, or a denial of an assistance payment, 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 provision 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.

 The bill would also direct the Commissioner of Community Affairs would rename the current “Homelessness Prevention Program” as the “Eviction and Homelessness Prevention Program.” The bill directs the commissioner to revise and amend the "Homeless Prevention Program Regulations" to meet or provide for the following: (1) the regulations would be renamed the “Eviction and Homelessness Prevention Program Regulations”, (2) a household would be eligible to participate in the program if, due to reasons beyond the household’s control, 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 income 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, and (6) eligible households would be awarded grants for periods of up to two years, depending upon the person’s or household’s particular circumstances. 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 prepare guidance covering the amount and duration of the grants, in accordance with the following guidelines and principles: (a) for a very low income household, a deep subsidy would be provided in the amount necessary to limit the household’s share of ongoing rent to not more than 40 percent of the household’s income, (b) for a low income household, a shallow subsidy would be provided in the amount necessary to limit the household’s share of ongoing rent to not more than 40 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 flat monthly grant of $250 would be provided to the household if the household pays more than 50 percent of the household’s income as ongoing rent.

 The revisions to the "Homeless Prevention Program Regulations" would also provide that, 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 as a result of reasons beyond the household’s control, the household’s income and family situation 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. Finally, these regulatory revisions would also provide that, during the course of the payment period, a participant household would certify the household’s current income once every two months, using a one-page 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.

 The bill would also establish within the Department of Community Affairs the “NJ Early Intervention Eviction Prevention Program.” Within 30 days of the enactment of the bill, the department would be required to establish an “Office of Eviction Prevention,” which would be responsible for the (1) identification of all federal, state, local, and other sources of financial assistance available for use to prevent the eviction of residential tenants, including but not limited to programs which provide both deep and shallow rental subsidies, (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 identifying and training at least one non-profit, community-based organization in each county with regard to the availability of and means of accessing such financial assistance by at-risk tenants.

 Also within 30 days of the enactment of this legislation, the department would be required to establish the “NJ Eviction Prevention Mediation Program,” which would operate in a manner similar to the “NJ Foreclosure Mediation Program.” In addition to facilitating the provision of mediation in the form and for the purposes outlined below, it would be the responsibility of the program to ensure that participating tenants are provided with legal advice and assistance if they are not otherwise represented or advised by counsel. The department would contract with a non-profit provider or providers in each county for the purpose of conducting the mediation sessions, providing the necessary advice regarding tenants’ rights, and also providing the necessary legal assistance. Each such provider would be responsible for employing a sufficient number of mediators, in-house attorneys and experts in tenants’ rights to ensure that mediation sessions are conducted in a timely fashion.

 At least 21 days prior to the filing of an eviction complaint for non-payment of rent which has accrued subsequent to the end of the moratorium period, a landlord would, using forms prepared by the department, notify both the department and the affected tenant that such an eviction filing may be necessary. If the matter is not resolved in accordance with the procedures outlined in the following sections, and a summary dispossess complaint is subsequently filed, a copy of this notice would be attached to the complaint. Failure to serve and attach the required notice would result in dismissal of the complaint.

 Within seven days of receipt of this notice, the department would contact both parties and establish a date and time for the convening of an assisted eviction prevention mediation session, which would take place no later than 16 days subsequent to receipt of the notice, and prior to the filing of an action for eviction.

 Eviction prevention mediation sessions would be conducted electronically, on an agreed upon day at and agreed upon time, via a process that allows all parties, as well as the mediator and any other participants, to see and hear each other, unless all parties and participants agree that the session will be conducted in person. In person eviction prevention mediation sessions would not be conducted in the courthouse or other government building. All such sessions would be conducted at schools, churches, non-profit office facilities, or other appropriate locations within five miles of the courthouse. All such sessions would be scheduled at times agreed upon and convenient to all parties, including evenings and weekends.

 A representative of the Office of Eviction Prevention would be present at each scheduled mediation session, in order to facilitate resolution of all payment-related issues.

 The purposes and goals of the mediation process would be: (1) to identify all existing and potential legal issues and tenants’ rights that may have an impact upon the jurisdiction of the court or otherwise affect the possible outcomes of any summary dispossess proceeding, (2) to identify all existing or potential issues that do or may affect the participating tenants ability to make rental payments in a timely fashion and in full, (3) to identify, prepare and implement an affordable payment plan that will address all payment issues so identified, in order to insure to the greatest extent possible that rent will be timely paid, (4) identify all potential sources of one-time, short and long-term funding, including the use of deep and shallow subsidies, which will facilitate successful creation and implementation of such a plan, (5) establish an implementation plan which identifies and provides the hands-on assistance tenants will need to pursue and apply to the particular funding sources identified as necessary, and (6) produce a written agreement embodying and memorializing all of the above.

 It would be the obligation of all parties to undertake the mediation process in good faith and with the intent of reaching a reasonable resolution of all issues involved. Failure by a landlord to negotiate and participate in good faith would be a defense to and action for eviction; failure to do so by a tenant may lead to an eviction filing and displacement.

 If the mediation is successful, and the parties reach an agreement with regard to a reasonable and affordable payment plan, a Stipulation of Settlement would be prepared, which stipulation would be in the form established by the department. The Stipulation of Settlement would further provide that, in the event a tenant fails to abide by the payment plan, the landlord may institute a summary dispossess proceeding. If the matter cannot be resolved through mediation, and the amounts claimed due are not paid, the landlord may commence a summary dispossess proceeding against the tenant.

 In any such civil action for non-payment of rent, a tenant would be advised of the tenant’s right to request a two-week adjournment, which would be granted as a matter of right. At least one-week prior to the trial of any matter involving non-payment of rent, the tenant would again be advised of all rights provided by the bill, as well as all potential sources of funding that may be available to reduce the tenant’s obligation, and offered the opportunity to engage in a final mediation session on or prior to the trial date. Payment arrangements subsequently agreed to would be reviewed by the court, and would not be approved unless the court finds that the tenant clearly understood the tenant’s rights as well as the terms of the agreement.

 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 “Tenant COVID-19 Emergency Rental Arrearage Program” the sum of $350,000,000; for the “Eviction and Homelessness Prevention Program” the sum of $350,000,000; for the Office of Eviction Prevention the sum of $5,000,000; for the “NJ Eviction Prevention Mediation Program” the sum of $20,000,000. The sum of $20,000,000 would be appropriated to the department from the same funds, as described above, provided by the federal government in order to fund those actions needed to be taken by the department to effectively implement the rental arrearage and homelessness prevention programs. Additional federal funding for emergency rental assistance related to the COVID-19 pandemic would be appropriated to the foregoing programs as it becomes available. Households otherwise ineligible for assistance using federal funds would be assisted with State funds.