

Date of Hearing: May 20, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2406 (Wicks) – As Amended May 11, 2020

SUBJECT: Homeless Accountability and Prevention Act: rental registry online portal.

SUMMARY: Establishes the Homeless Accountability and Prevention Act which requires the Department of Housing and Community Development (HCD) to create an online rental registry of properties which received state or federal rental assistance provided in response to the COVID-19 state of emergency. Specifically, **this bill:**

- 1) Requires a landlord that accepts rental assistance payments from federal or state funds appropriated by the Legislature, or both, that are provided for that purpose in response to a state of emergency proclaimed by the President of the United States or the Governor in response to COVID-19 to complete and submit a rental registry form for a dwelling unit.
- 2) Defines a “landlord” to mean a person or entity for which both of the following apply:
 - a) The person or entity hires dwelling units subject to Chapter 2 (commencing with Section 1940) of Title 5 or Part 4 of Division 3 of the Civil Code;
 - b) The person or entity accepts rental assistance payments from federal or state funds appropriated by the Legislature, or both, that are provided for that purpose in response to a state of emergency proclaimed by the President of the United States or the Governor in response to COVID-19; and
 - c) Excludes a person or entity who owns or operates five or fewer rental dwelling units.
- 3) Prohibits a landlord who fails to complete and submit a rental registry form from taking any of the following actions:
 - a) Issuing a notice for a rent increase;
 - b) Issuing a notice to terminate a tenancy; or,
 - c) Issuing any notice or action to enforce an unlawful detainer.
- 4) Requires HCD to contract with an outside entity to create an online rental registry portal and disseminate that information to the public. Specifies that the rental registry be:
 - a) Able to receive information from landlords, as defined;
 - b) Able to receive information from parties other than landlords, including, but not limited to, tenants, local governments, courts, nonprofit organizations, and residents of this state;
 - c) Include a rental registry form, as specified, which shall be available on the rental registry online portal; and

- d) Operational by January 1, 2022 along with all forms necessary for its effective and efficient use.
- 5) Requires all landlords to submit the rental registry form, under penalty of perjury, by April 1, 2022 and every March 31 thereafter.
- 6) Specifies that the rental registry online portal shall allow parties other than landlords, including but not limited to, tenants, local governments, courts, nonprofit organizations, and residents of the state, to submit information, which shall be subject to verification by HCD, or an entity it contracts with, before becoming publicly available.
- 7) Requires the form to include the following information:
 - a) The legal address of each property and all associated rental unit numbers;
 - b) The legal name of the owner or ownership entity for each property, including but not limited to, limited partners, general partners, LLC members, and shareholders with 10 percent or more ownership;
 - c) The ownership type of each property and the year the owner acquired the property;
 - d) The number of bedrooms, bathrooms, and occupancy status of each rental unit;
 - e) The month and year that the most current occupancy began for each rental unit;
 - f) The total number of months that each rental unit was rented during the previous calendar year and the number of days the unit was vacant;
 - g) The amount of payments collected for rent and utilities during the month of January of the current year for each rental unit. This amount shall include the amount paid for utilities that is included in the rent;
 - h) The month and year of the effective date of the last rent increase and decrease for each rental unit and the amount of the increase or decrease;
 - i) The number of tenants for which the landlord terminated a tenancy in the previous calendar year, and the reason for each termination;
 - j) Whether the unit is deed restricted as affordable housing and, if so, the income level at which the unit is restricted; and
 - k) Whether the unit is subject to a local rent control ordinance.
- 8) Provides that a landlord who completes a rental registry form as required by this section shall receive an annual statement of registration certification within a reasonable time after completing the registration.
- 9) Requires the rental registry online portal to comply with all federal and state laws regarding privacy and personally identifying information.

- 10) Declares that the bill shall be known as the Homeless Accountability and Prevention Act and establishes that it is the intent of the Legislature to do all of the following:
- a) Ensure accountability for landlords receiving rental assistance, from state and federal funds, in response to the COVID-19 state of emergency, proclaimed by the Governor on March 4, 2020;
 - b) Prevent homelessness by providing access to data encompassing the full scope of rental units in the state; and
 - c) Provide an open source portal to local government, courts, nonprofit organizations, and residents of this state to submit and aggregate accurate rental data.

EXISTING LAW:

- 1) Grants HCD the powers to do any and all things necessary to carry out its purposes and to exercise the powers expressly granted to it. (Health and Safety Code Section 50406 (n).)
- 2) Provides that a tenant has committed unlawful detainer when the tenant continues in possession of the property without the landlord's permission after the expiration of the lease term. No specific additional notice is required for a tenant who is guilty of unlawful detainer, except that a tenancy at will must be terminated by notice, as specified. (Code of Civil Procedure Section 1161 (1).)
- 3) Provides that a tenant has committed unlawful detainer when the tenant continues in possession of the property without the landlord's permission after the tenant has failed to cure nonpayment of rent, after service of a 3-day notice requiring payment of the rent past due. (Code of Civil Procedure Section 1161 (2).)
- 4) Provides that a tenant has committed unlawful detainer when the tenant continues in possession of the property without the landlord's permission after the tenant has breached a covenant of the lease or failed to perform other conditions under the lease, after service of a 3-day notice requiring performance of such covenants or conditions. (Code of Civil Procedure Section 1161 (3).)
- 5) Provides that a tenant has committed unlawful detainer when the tenant continues in possession of the property without the landlord's permission after the tenant has breached a covenant of the lease prohibiting subletting, assignment, or waste; has committed or permitted a nuisance on the premises; or used the premises for an unlawful purpose. (Code of Civil Procedure Section 1161 (4).)
- 6) Requires a manager, janitor, housekeeper, or other responsible person to reside upon the premises and have charge of every apartment house in which there are 16 or more apartments, and of every hotel in which there are 12 or more guest rooms, in the event that the owner of an apartment house or hotel does not reside upon said premises. Only one caretaker is required for all structures under a single owner and on one contiguous parcel of land. (California Code of Regulations, Title 25, Section 42.)
- 7) Defines a "code enforcement officer" as a person (a) employed by any of a variety of public entities, (b) who has enforcement authority for health, safety, and welfare requirements, (c)

whose duties include enforcement of any statute, rule, regulation, or standard, and (d) who is authorized to issue citations or file formal complaints. (Penal Code Section 829.5.)

- 8) Requires landlords to put buildings to be occupied by human beings in a condition fit for such occupation and to repair all dilapidations which render it untenable. (Civil Code Section 1941.)
- 9) Sets forth the characteristics that render a dwelling untenable. (Civil Code Section 1941.1; Health and Safety Code Sections 17920.3 and 17920.10.)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "COVID-19 has exacerbated the state's existing housing crisis. Thousands of tenants will face homelessness and evictions once Governor Newsom's Eviction Moratorium is lifted. Simultaneously, property owners are at risk of losing their income if tenants cannot make rental payments. Relief is desperately needed for all parties.

To alleviate the effects of this growing public health crisis, the Legislature will need accurate rental data to create policy-based solutions. AB 2406 allows tenants, local governments, nonprofit organizations, and property owners to voluntarily submit rental information to an online portal. Additionally, this bill holds property owners accountable by requiring them to submit rental information if they accept state or federal assistance. The purpose of this bill is to prevent homelessness by gaining a full scope of rental units in the state post-pandemic."

Background: According to the Public Policy Institute of California (PPIC) poll, a record high of two-thirds of Californians say the affordability of housing is a big problem in their region. Additionally, according to PPIC, "the state has six of the nation's fifteen most-expensive large metropolitan rental markets: San Francisco (number one), San Jose, Oakland, Orange County, San Diego, and Los Angeles. Since 2015, rents have risen anywhere from 25 percent to 50 percent in these areas. According to estimates by the US Department of Housing and Urban Development (HUD), the median fair-market rent for a two-bedroom apartment in these areas ranges from \$1,934 in Los Angeles to \$3,085 in San Francisco. California renters pay 43 percent above the nationwide median—while California's median household income is only 19 percent higher than the nationwide median. This means that the share of Californians with excessive housing costs is quite high: 38.4 percent of mortgaged homeowners and 55.3 percent of renters spend more than 30 percent of their total household income on housing, compared with 27.5 percent and 49.5 percent nationwide."

On March 4, 2020 California Governor Gavin Newsom declared a State of Emergency in response to the spread of COVID-19. Millions are now facing an uncertain economic future as workplaces, schools, and other institutions have closed to prevent further spread of the virus that leads to COVID-19. For many tenants the crisis has meant job losses, cuts in hours worked, and reduced incomes which have threatened their ability to meet basic needs, including rent. As part of the response to the economic fallout of the COVID-19 crisis, there are a number of state and federal proposals to provide rental assistance to tenants who are unable to pay their rent due to COVID-19 impacts.

In order to track the use of public funds distributed for COVID-19 rental assistance, while also providing a better understanding of the state's rental housing landscape, this bill would establish the Homeless Accountability and Prevention Act. It would require HCD to contract with an outside entity to create a rental registry which can accept information from landlords who received COVID-19 rental assistance from the state, the federal government, or both. As such, AB 2406 serves as a way to ensure accountability from property owners who receive public funds via rental assistance.

Rental assistance is an important tool for providing housing stability for tenants who have seen their incomes decline in the wake of the COVID-19 emergency. However, rental assistance clearly benefits both landlords and tenants who would otherwise be unable to pay rent. Given that rental assistance comes from taxpayer funds, the Legislature has an interest in seeing where rental assistance funds end up geographically and tracking whether those funds contribute to greater housing stability for renters receiving assistance. Creating a centralized database of properties that receive rental assistance can also help inform future policy responses to emergencies that involve widespread financial impacts for tenants, including wildfires, earthquakes, and floods.

The rental registry would also be designed to allow other parties, such as tenants, nonprofits, and local governments to submit information to the registry on a voluntary basis. This information would then be subject to verification before becoming part of the database. Since there are likely to be landlords who will not need to accept rental assistance because their tenants are still paying rent, allowing information to be submitted by other parties can help provide a more complete picture of the state's rental housing stock. This type of crowd-sourcing approach is common on platforms such as Wikipedia where anyone can contribute information, but submissions are subject to verification.

Though there is currently no statewide rental registry in California, some local jurisdictions have rental registries that require property owners to register annually. Rental property owners are charged an annual fee to register their property and, when the property is first registered, the city may do an initial inspection of the property. Although some data is available through online sources including Zillow, there is no comprehensive source of data on rental properties to inform state or regional policy.

Arguments in support: The supporters argue this bill will help ensure the proper enforcement of local and state housing rules, enable the identification of fair housing and other issues, and provide valuable data to inform future efforts to address specific aspects of the housing affordability crisis. According to one of the co-sponsors of the bill, TechEquity Collaborative, “over the past few years, as we have begun to engage in housing advocacy work, we have found the policy conversation around tenant protections to be taking place in the absence of real data about the extent of the problem. The truth is, no one really knows how much rents are increasing across the state or how many people are forced out of their homes by evictions. The rent data that does exist, from places like the American Community Survey and Zillow, are insufficient in many ways. They are proprietary, expensive, aren't comprehensive, and tend to report top-line data such as averages.”

Arguments in opposition: According to the California Apartment Association, this bill would “invade the privacy of owners and tenants who live in rental properties by making an extensive amount of sensitive information publicly accessible. For example, the bill would require

landlords to disclose information about evictions even when that information may be masked by courts for privacy reasons...this measure places extensive burdens on providers of housing, allows the public to glean otherwise private, sensitive information, and comes with a steep price tag when state resources would be better spent elsewhere.”

Previous legislation: AB 724 (Wicks) (2019) would have created a rental registry for properties that met certain criteria. This year’s version applies to properties receiving rental assistance provided in response to COVID-19, and has an enforcement mechanism which AB 724 lacked. AB 724 was held in suspense in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Partnership Corporation (Co-Sponsor)

TechEquity Collaborative (Co-Sponsor)

ACCE Action

AIDS Healthcare Foundation

Asian Pacific Environmental Network

Bend the Arc: Jewish Action

California Association of Code Enforcement Officers

California YIMBY

Central California Asthma Collaborative

Central Valley Empowerment Alliance

Community Corporation of Santa Monica

Congregations Organized for Prophetic Engagement (COPE)

CORE

Disability Rights California

East Bay for Everyone

Eviction Defense Network

Faith in The Valley

Fresno Barrios Unidos

GLIDE

Housing Equality & Advocacy Resource Team (HEART)

Housing Now! CA

Jakara Movement

KIWA

LA Forward

Latinos United for A New America

Leadership Counsel for Justice & Accountability

MH Action

Mission Economic Development Agency (MEDA)

Non-Profit Housing Association of Northern California

Pacifica Housing 4 All

Peninsula for Everyone

PICO California

POWER

Power California

Public Interest Law Project
Roman Catholic Diocese of Fresno
Rural Community Assistance Corporation
Social Justice Learning Institute
Sonoma Valley Housing Group
TODCO
Transform
UAW Local 2865
Women's International League for Peace and Freedom – Fresno
YIMBY Action
8 Individuals

Support if Amended

Courage California

Opposition

Affordable Housing Management Association -Pacific Southwest
Apartment Association of Orange County
Apartment Association, California Southern Cities
California Apartment Association
California Association of Realtors
California Rental Housing Association
East Bay Rental Housing Association
South California Rental Housing Association

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