Date of Hearing: August 18, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
SB 1410 (Caballero) – As Amended August 5, 2020

Policy Committee: Judiciary Vote: 7 - 3

Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

SUMMARY:

This bill creates a tenant-owner COVID-19 eviction relief agreement (CERA), restricts rental property owners from evicting tenants for unpaid rent accrued during the state of emergency and allows a tax credit for owners that defer rent for tenants in connections with the COVID-19 pandemic. Specifically, this bill:

1) Provides, for taxable years beginning on January 1, 2024, and before January 1, 2034, a tax credit to owners who enter into a CERA with their tenants in an amount equal to the amount of unpaid rent.

2) Requires FTB, on or before January 1, 2021, to create a registration program for owners who will claim tax credits.

3) Requires an owner to provide the FTB with a copy of each fully-executed CERA by January 1, 2021, or within 60 days of execution.

4) Makes an owner eligible for a tax credit once that owner enters into at least one CERA with a tenant and has registered with the FTB.

5) Provides an owner who qualify as a "small business owners," as defined, is entitled to an inflation adjustment for the tax credit of not less than 2% on deferred unpaid rent.

6) Permits an owner whose tax credit exceeds their tax liability for a given year to either:

   a) Be paid the excess amount, if the Legislature makes an appropriation to allow the tax credits pursuant to this bill to be refundable.

   b) Carry over the excess amount to reduce their tax liability in succeeding years, until the credit is exhausted.

7) Provides that any other credit or deduction that an owner might claim in connection with deferred unpaid rent must be reduced by the amount of any tax credit provided to that owner.

8) Permits an owner to sell any tax credit the owner has not claimed on their tax return to one unrelated party and prohibits an unrelated party from making any further sale of that tax credit. Requires the owner to report specified information to the FTB prior to such a sale.

FISCAL EFFECT:

1) One time and annual costs (General Fund (GF)) to the Franchise Tax Board (FTB) in the tens to hundreds of millions of dollars in staff workload and infrastructure to implement the COVID-19 eviction relief program by 2021. FTB estimates it will need to hire 600 new staff beginning January 1, 2021 to accommodate its workload. FTB also estimates at least $1 million dollars annually in postage to confirm receipt and notify people of eligibility for a tax credit. FTB also estimates one-time costs of approximately $500,000 in new hardware and software to implement the eviction relief program. FTB reports it would need to develop a rent forgiveness program, track deferred rent payments, credit sales and reporting, and conduct collection actions, if necessary. FTB estimates this program would significantly impact programming and processing costs and potentially require a shift of resources from other workloads to meet the timeframes outlined in this bill, considering the potential volume of tenants and owners who may participate in this program.

2) Loss of revenue to the GF as a result of unpaid rental income of $1 billion dollars in 2020-21, $300 million dollars in 2021-22 and $20 million dollars in 2022-23. Loss of revenue due to credit refunds of $8.5 billion dollars in 2023-24. Loss of revenue due to offset tax liability of $8.5 billion dollars in FY 2024-25, $2 billion dollars in FY 2025-26 and $2.8 billion dollars between 2026-27 and 2033-34. FTB estimates $10 billion dollars will be repaid evenly over the next ten years.

COMMENTS:

1) **Purpose.** According to the author:

> SB 1410 creates a voluntary agreement structure. Tenants are free to decline to utilize the program it creates, but that rejection subjects them to eviction under governing law. Landlords may decline to utilize the program, but tenants will likewise be protected from eviction. As such, for tenants and landlords who cannot otherwise arrange a modification of their lease agreements, SB 1410 provides an essential way to resolve their financial difficulty.

2) **COVID-19 and Evictions.** On March 16, 2020, Governor Newsom issued an executive order authorizing local governments to halt evictions for renters affected by COVID-19. The California Supreme Court issued a moratorium on all eviction-related proceedings until September 1, 2020. Eviction proceedings may resume as of September 2, 2020, unless the Legislature acts to prevent evictions. If the Legislature does not act to prevent evictions, California may see a record number evictions resulting in housing instability for hundreds of thousands of people at time when California is ordering residents to shelter in place to

prevent the spread of COVID-19.

3) **FTB Estimate of Costs and Revenue.** This bill requires FTB to calculate installments for repayment of rent where there is a properly filed CERA and allow a tenant to apply for reduction or forgiveness of rent based on income. FTB would also have the authority to deduct the amount of each installment from a person's income. The property owner could then exclude the amount of the unpaid rent from the owner's gross income from January 1, 2024, to January 1, 2034. FTB would allow a credit equal to the gross amount of unpaid rent deferred.

   The FTB estimates there are 3.7 million potentially qualified renters filing California tax returns in taxable year 2020. Using unemployment data from the Employment Development Department in conjunction with labor force data from the Bureau of Labor Statistics results in an unemployment rate of 22%. Applying this to the 3.7 million renters results in approximately 815,000 tenants in taxable year 2020 that will likely defer their rent. Multiplying the 815,000 tenants by the average rent of $1,700, as indicated by the United States Census Bureau, the result is a monthly rental income loss of $1.4 billion dollars. At an average tax rate of 6%, FTB estimates a revenue loss of approximately $84 million per month. In addition, credits will be generated at $1.4 billion dollars per month to be used beginning in taxable year 2024. Credits have been assumed to be generated through June 30, 2021, for a total of $22 billion dollars of credits.

   FTB also estimates, based on the expected taxable income of tenants, $12 billion dollars of rent will not be repaid to the state because renters' taxable income allows them to reduce or eliminate their installment payments. The remaining $10 billion dollars of deferred rent will be repaid to the state in annual installments starting in the 2024 taxable year. FTB expects approximately $10 billion dollars to be repaid evenly over 10 years, or $1 billion dollars annually through taxable year 2033.

4) **Other Concerns.** In addition to costs, opponents of this bill have pointed out other issues that may need to be resolved before enactment. First, it appears tenants who do not have a social security number or individual tax identification number cannot enter into a CERA because the FTB would have no way of collecting rent in the future. This may disproportionately affect undocumented Californians. It also requires tenants file tax returns. Californians making very little annual income are not required to file tax returns. Second, although this bill allows a property owner to sell their tax credits to a third party in order to offset immediate loss in rents, there is no market for these tax credits at present. Additionally, the tax credits likely will not be worth the amount lost from unpaid rents. Third, this bill requires tenants to reconcile their annual repayments when they file their tax returns. However, if a tenant fails to make payment, the tenant may be faced with an insurmountable debt that could result in wage garnishment. Finally, this bill may not sufficiently prevent unscrupulous property owners from selling their tax credits and evicting tenants anyway. Other tax credit programs have wrestled, at least initially, with fraud and abuse. Significant oversight may be required to ensure this eviction program does not result in further harm to the most vulnerable tenants.

5) Related Legislation.

a) AB 1436 (Chiu) prohibits a tenant from being evicted if they did not pay rent during the period between March 4, 2020, and the earlier of either the end of the state of emergency or April 1, 2021, provided the tenant has experienced COVID-19 economic impacts. AB 1436 is pending in Senate Judiciary.

b) SB 915 (Leyva) prohibits mobile home parks from evicting residents who notify park management of COVID-19 economic impacts, and requires parks to provide those residents with additional time to repay outstanding rent, utilities or other charges, and to cure violations of park rules. SB 915 is pending on the Assembly floor.

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