

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

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SUBJECT

Tenancy: rent caps

DIGEST

This bill limits rent-gouging in California by placing an upper limit on annual rent increases: 7 percent plus inflation, up to a maximum of 10 percent, for specified housing that is over 10 years old. To prevent landlords from engaging in rent-gouging by evicting tenants, the bill also requires that a landlord have and state a just cause, as specified, for any eviction. Landlords with 10 or fewer rental properties are exempt. The bill sunsets after three years and does not preempt any local rent control ordinances.

EXECUTIVE SUMMARY

The phrase “price gouging” refers to businesses taking advantage of an emergency in order to charge prices well beyond what the market would ordinarily bear. Existing California law prohibits price gouging. During officially-declared states of emergency, it is a crime to increase prices on consumer goods by more than 10 percent. California is in the midst of a housing crisis. There are reports that some landlords are taking advantage of this crisis to engage in “rent-gouging,” dramatically increasing their tenants’ rent with the knowledge that, due to the present crisis, tenants are unlikely to have affordable alternatives. Dramatic rent increases like these can act as the final straw, pushing people into homelessness. This bill prohibits large landlords from engaging in rent-gouging. Specifically, while still permitting significant annual rent increases, the bill prevents landlords with more than 10 rental properties from raising the rent more than 7 percent plus inflation each year, up to a hard cap of 10 percent. To ensure that landlords could not engage in the prohibited rent-gouging by replacing current tenants with new tenants at rent-gouging rates, the bill also requires landlords to have and to state a just cause for any eviction. The bill would not apply to recent construction, would sunset after three years, and would not preempt local rent control ordinances.

The bill is sponsored by the Alliance of Californians for Community Empowerment, California Rural Legal Assistance Foundation, PICO California, Public Advocates, and Western Center on Law and Poverty. Support is from tenant advocates and anti-poverty

organizations. Opposition comes from landlords, who contend that imposition of rent caps interferes with their property rights and will hinder resolution of the housing crisis by reducing the financial incentive to build rental housing.

PROPOSED CHANGES TO THE LAW

Existing state law:

- 1) Provides that upon the declaration of a state of emergency by the President of the United States or the Governor, or upon the declaration of a local emergency by the executive officer of any county, city, or city and county, and for a period of 30 days following that declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell specified goods and services, including housing, for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of emergency. (Pen. Code § 396(b).)
- 2) Allows landlords, in the absence of a local rent control ordinance or a fixed-term lease, to raise rents whenever they want and as much as they want subject only to the following advance notice requirements:
 - a) at least 30 days' notice for rent increases of up to 10 percent, cumulatively, per year; or
 - b) at least 60 days' notice for rent increases of 10 percent or more, cumulatively, per year. (Civ. Code § 827(b).)
- 3) Allows landlords, in the absence of a local eviction control ordinance or a fixed-term lease, to terminate a tenancy unilaterally without stating a reason, subject only to the following advance notice requirements:
 - a) at least 30 days' notice for tenants who have occupied the premises for less than a year; or
 - b) at least 60 days' notice for tenants who have occupied the premises for a year or more. (Civ. Code § 1946.1.)

This bill:

- 1) Prohibits specified landlords from raising rents on current tenants by more than seven percent plus the percentage change in the cost of living, as defined, up to an absolute maximum of 10 percent each year. Limits landlords to one rent increase per year.
- 2) Applies to all rent increases occurring on or after March 15, 2019.
- 3) Exempts the following types of rentals from the rent increase limitation:
 - a) deed-restricted affordable housing for persons and families of very low, low, or moderate income, as defined;

- b) dormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution;
 - c) housing subject to any form of rent or price control through a public entity's valid exercise of its police power that restricts annual increases in the rental rate to an amount less than that provided in (1), above.
 - d) housing that has been issued a certificate of occupancy within the previous 10 years;
 - e) housing that is a detached single-family residential dwelling unit that meets both of the following requirements:
 - i) the owner is a natural person who owns and leases no more than 10 units and does not lease any other residential property through any other entity; and
 - ii) the dwelling has a written lease that includes a provision certifying that the owner meets the provisions of (i), above, and notifying the tenant that the dwelling is not subject to the rent increase limitation in this bill.
- 4) Specifies that, upon expiration of an affordable housing deed restriction, a landlord is not subject to the rent increase limitations contained in this bill for purposes of setting the initial, post-restriction rental rate.
- 5) Provides that, once a tenant has occupied residential real property for 12 months or more, the landlord shall not terminate the lease without just cause, which shall be stated in the written notice to terminate tenancy.
- 6) Divides just cause into two categories: at-fault and no-fault.
- 7) Provides that the following are at-fault just causes for terminating a tenancy:
- a) default in the payment of rent;
 - b) breach of a material term of the lease, as specified;
 - c) maintaining, committing, or permitting the maintenance or commission of a nuisance, as defined;
 - d) committing waste, as defined;
 - e) refusal to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions;
 - f) criminal activity by the tenant on the premises, including any common areas, or any criminal threat, as defined, directed at any owner or agent of the owner of the premises;
 - g) assigning or subletting the premises in violation of the tenant's lease;
 - h) refusal to allow the landlord to enter the dwelling pursuant to a lawful request;
 - i) using the premises for an unlawful purpose, as defined.
- 8) Provides that the following are no-fault just causes for terminating a tenancy:

- a) intent to occupy the residential real property by the owner or their spouse, children, grandchildren, parents, or grandparents, if the tenant agrees to the termination or the lease agreement allows for unilateral termination in such a scenario;
 - b) withdrawal of the residential property from the rental market.
 - c) unsafe habitation, as determined by a government agency that has issued an order to vacate, order to comply, or other order that necessitates vacating the residential property; or
 - d) intent to demolish or to substantially remodel.
- 9) Requires a landlord who terminates the tenancy based on a no-fault just cause provide relocation assistance to the displaced tenant in an amount equal to one month's rent. The owner and tenant may also agree, in lieu of direct payment, to waive the payment of rent for the month after the notice of termination of tenancy is given.
- 10) Exempts the following types of residential real properties or residential circumstances from the just cause requirement for terminating a tenancy:
- a) transient and tourist hotel occupancy, as defined;
 - b) housing accommodations in a nonprofit hospital, religious facility, or extended care facility;
 - c) dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school;
 - d) housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner who maintains their principal residence at the residential real property;
 - e) single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases two units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit;
 - f) housing that has been issued a certificate of occupancy within the previous 10 years;
 - g) housing that is a detached single-family residential dwelling unit that meets both of the following requirements:
 - i) the owner is a natural person who owns and leases no more than 10 units and does not have an ownership interest in any other rental residential real property through any other entity; and
 - ii) there is a written lease for the dwelling that includes a provision certifying that the owner meets the provisions of (i), above, and notifying the tenant that the dwelling is not subject to this section.
- 11) Does not preempt any local laws limiting rent increases or the grounds on which a landlord may terminate a tenancy.

- 12) Directs the Legislative Analyst's Office to report to the Legislature regarding the effectiveness of the bill on or before January 1, 2023, including the impact of the rental rate cap on the housing market within the state.
- 13) Sunsets on January 1, 2023.

COMMENTS

1. Data documenting the extent of the rental housing affordability crisis in California

Statistical evidence amply supports the widespread impression that California is experiencing a rental housing affordability crisis. Rents throughout California have been increasing at astronomical rates throughout much of this decade. According to media reports, the average annual rent increase in Oakland, San Francisco, and San Jose was over 10 percent in 2014.¹ Southern California has not fared much better. Average rent increases in Los Angeles County between 2011 and 2018 were 34 percent.² As a result, a majority of California tenant households qualify as "rent-burdened," meaning that 30 percent or more of their income goes to the rent. Over a quarter of California tenant households are "severely rent-burdened" meaning that they spend over half their income on rent alone.³ There is no indication that this will abate any time soon. The cost of rent continues to rise dramatically. Average incomes, meanwhile, have not kept pace.⁴

2. Rent increases in California: how it works now

California state law regarding rent increases is generally quite simple. In the absence of a long-term lease with a fixed rental rate or a local rent control ordinance, a landlord may raise the rent at any time and by any amount that the landlord chooses. The only limitation has to do with how much notice must be given. As long as the rent increase is, cumulatively, less than 10 percent in a single year, only 30 days' notice is required. (Civ. Code § 827(b)(2).) For rent increases of more than 10 percent, the landlord must give 60 days' notice. (Civ. Code § 827(b)(3).) A California tenant's only remedy for dealing with a rent increase that is too large to afford, or that the tenant is unwilling to pay, is to try to move elsewhere. In that case, the tenant must try to find something

¹ Pender, *After Lull, Bay Area Rents Are Rising Again, But Not Like Before* (Jan. 12, 2019) San Francisco Chronicle <https://www.sfchronicle.com/business/networth/article/After-lull-Bay-Area-rents-are-rising-again-but-13528213.php> (as of Jun. 8, 2019).

² Snibbe and Collins, *California Rents Have Risen to Some of the Nation's Highest* (Feb. 15, 2018) Los Angeles Daily News <https://www.dailynews.com/2018/02/15/california-rent-rates-have-risen-to-some-of-the-nations-highest-heres-how-that-impacts-residents/> (as of Jun. 8, 2019).

³ Kimberlin, *California's Housing Affordability Crisis Hits Renters and Households With the Lowest Incomes the Hardest* (Apr. 2019) California Budget & Policy Center <https://calbudgetcenter.org/resources/californias-housing-affordability-crisis-hits-renters-and-households-with-the-lowest-incomes-the-hardest/> (as of Jun. 8, 2019).

⁴ *Income*, Department of Finance, State of California <http://www.dof.ca.gov/Forecasting/Economics/Indicators/Income/> (as of Jun. 25, 2019).

equally affordable that is available, safe, clean, and within reasonable commuting distance of the tenant's job and, if the tenant has them, the tenant's partner's job, and the tenant's children's school.

3. Distinguishing this bill from rent control

Many local jurisdictions in California have rent control. This bill would not preempt or otherwise alter how those local rent control ordinances work. Like this bill, rent control ordinances generally cap how much a landlord can increase the rent each year. Unlike this bill, however, rent control laws typically limit the permissible rent increases to inflation, or something close to it. They thus "control" the rent in the sense that tenants under rent control can be reasonably confident that they will retain the original benefit of the contractual bargain they made with the landlord upon moving in. The rent may go up, but relative to incomes and the cost of other goods, it should generally stay about the same.

This bill, by contrast, does not control rents. Under the bill, landlords would still be able to raise rents quite significantly beyond inflation. Since any annual increase in the expenses associated with doing business as a landlord will generally be reflected in inflation, this means that, under this bill, landlords will still be able to increase their revenues and investment returns well beyond whatever was built into the initial lease agreement that they or their predecessor in interest negotiated with the tenant. Moreover, because the percentage of permissible increase under the bill will compound year over year, landlords will still be able to raise rents quite dramatically over time. For example, an apartment renting at \$2000 initially, could, under this bill, cost the tenant \$3,221 within just five years.

In essence, then, this bill does not prevent large rent increases over time. What the bill really prevents is sudden rent spikes, while still giving landlords quite broad authority to raise rents over the longer-term.

4. Retroactivity

If passed by the Legislature and signed by the Governor, the bill would go into effect on January 1, 2020. This prospect creates a policy hazard. Aware that they will soon be restricted from doing so by this bill, some landlords may dramatically increase rents before January 1, 2020. It is possible that some have already done so.

The bill anticipates the problem and tries to avoid it through a provision that makes the limitation on rent increases retroactive to March 15, 2019, roughly the day on which the bill was introduced. While this provision addressing the problem of landlords spiking rents in anticipation of the bill, it raises some possible concerns along the way, both practical and constitutional.

Practically, the question is how would this provision of the bill be enforced? Would landlords have to pay their tenants back for the overcharges from the invalidated rent increase? Would tenants receive a rent credit going forward? What would happen if a tenant had already moved out?

Constitutionally, applying the limitation on rent increases retroactively raises potential due process and impairment of contract issues. Neither is prohibitive. Retroactive legislation can be justified when it could be reasonably be believed necessary to serve the public welfare. (*Bouley v. Long Beach Memorial Medical Center* (2005) 127 Cal.App.4th 601, 611.) Similarly, the state can impair existing contracts if the impairment is not substantial (*General Motors Corp. v. Romein* (1992) 503 U.S. 181, 186), or where the state has a significant and legitimate public purpose behind the regulation and the adjustment of the rights of the contracting parties is appropriate to that public purpose. (*Rue-El Enterprises, Inc. v. City of Berkeley* (1983) 147 Cal.App.3d 81.) The purpose behind this bill – to mitigate displacement, homelessness, and economic hardship for tenants – would seem to qualify as just such a public welfare purpose.

Regardless, the author proposes a solution that avoids both the practical and constitutional challenges. The author intends to amend the bill in Committee to clarify that the restriction on rent increases will date back to March 15, 2019, but will only apply prospectively. In other words, any rent increase made between March 15, 2019 and December 1, 2019 will stand, but if that increase would have been impermissible under the bill, then, as of January 1, 2020, the applicable rent going forward will be whatever the rent was on March 15, 2019 plus the maximum permissible increase under the bill.

5. Necessity of provisions requiring just cause for eviction

Unless the relationship is governed by a fixed-term rental agreement (usually a year-long lease), existing law in California permits landlords to evict tenants for any lawful cause or for no reason at all. Such a system is incompatible with any limitation on rent increases, because it creates an easy way for landlords to evade the cap. Simply by evicting the current tenants without cause, the landlord can replace them with new tenants. Whatever amount the landlord elects to charge the new tenants will be part of a new lease, not a rent increase, and therefore not subject to the rent increase limitation. For this reason, for any limitation on rent increases to be effective, it must be paired with eviction controls: provisions that prevent landlords from removing tenants in order to evade the limitation on rent increases.

This bill includes the necessary eviction controls to make its anti-rent gouging provisions work. Specifically, under the bill, a landlord would have to have, and would have to state, a legally-valid cause in order to evict a tenant.

Because there is sometimes confusion about what happens under a just cause for eviction requirement, it is important to clarify that just cause requirements do not inhibit a landlord from removing tenants who fail to pay the rent, who breach their leases, who cause disturbances, who damage the property, or who otherwise behave in inappropriate ways. Under a just cause for eviction requirement such as the one contained in this bill, a landlord may still evict such tenants in exactly the same fashion that they do under existing law: after three days' opportunity to cure a failure to pay rent; after three days' opportunity to cure a material breach of the lease; or after three days' period if the tenant has committed waste or nuisance at the property. (Code Civ. Proc. § 1161.) The only difference is that, if a landlord intends to terminate the tenancy using a 30- or 60-day notice, the landlord must provide the tenant with a valid reason why. Having to state the reason for terminating the tenancy makes it more difficult for the landlord to simply kick out the current tenants in order to raise rents, because the landlord must justify terminating the tenancy with a just cause and, if the landlord's reason is false or mere pretext, the tenant may be able to challenge it in court. So long as the landlord is not trying to game the system, however, a just cause requirement should not ordinarily make it any more difficult for a landlord to remove a bad tenant.

6. Additional policy impacts related to the just cause for eviction requirement

In addition to being essential for this bill's anti-rent gouging provisions to work, the just cause for eviction requirements in the bill would have other public policy benefits. Existing California law prohibits landlords from evicting tenants for retaliatory or discriminatory reasons. (Civ. Code § 1942.5; Gov. Code § 12955.) Thus, a landlord is not supposed to evict a tenant because the tenant complained that the heater was not working in winter, that the roof is leaking, or that there is no hot water. Similarly, a landlord is not supposed to kick out a tenant because the tenant is Black, gay, disabled, or on account of the tenant's membership in any other protected category. However, because existing California law permits landlords to terminate tenancies without saying why, landlords can easily accomplish the same retaliatory or discriminatory purposes that would be illegal if stated openly, simply by serving a notice of termination of tenancy with no cause stated at all. For the same reason that this bill's just cause for eviction requirement would make it difficult for landlords to kick out current tenants in order to engage in rent-gouging surreptitiously, it would also make it more difficult for landlords to hide retaliatory or discriminatory motivations for evicting tenants as well. Requiring landlords to state the reason for termination of a tenancy forces them to articulate a valid reason for their actions and makes it possible for tenants to challenge bogus or pretextual reasons in court, if necessary. The just cause for evictions in this bill can therefore be expected to fortify California's existing laws against housing discrimination and retaliation.

On the other hand, some landlords contend that the ability to evict tenants without saying why can occasionally serve a useful purpose. Their contention is that stating the cause for an eviction could anger tenants and might provoke volatile tenants to retaliate

by damaging property or otherwise harming the landlord. Alternatively, landlords fear that if a volatile tenant questions the just cause provided by the landlord and proceeds to challenge the basis for that cause in court, it may be difficult to obtain witnesses willing to testify against the volatile tenant. Acknowledging that such fears about the aggressive or volatile tenants are legitimate, however, it may be worth asking how much difference just cause makes in such a situation. The fact that a volatile tenant is losing their housing at all is presumably the primary thing likely to trigger that volatility. It is even possible that having an explanation for the decision would help some volatile tenants to understand and accept why they are losing their home.

7. The dual purpose of relocation assistance in the bill

The bill divides the just causes that can be used to terminate tenancies into two categories: at-fault and no-fault. The at-fault evictions are mostly the same as the existing legal grounds for terminating a tenancy on relatively short notice: failure to pay rent; breach of the lease; unauthorized subletting; creating a nuisance; or causing waste. In fact, the bill explicitly cross-references the existing statute, Code of Civil Procedure 1161, that already governs evictions under these scenarios. In addition, the bill makes it clear that criminal activity or refusing the landlord reasonable access to the property are also just causes that would support terminating a tenancy.

The bill's no-fault just causes for eviction are different. Among the no-fault causes that would justify terminating a tenancy under the bill are moving-in a family member, undertaking significant remodeling, or removing the property from the rental market altogether. Whatever the no-fault justification for terminating the tenancy, the bill requires that the landlord provide the tenant with relocation assistance in the form of one month's worth of rent. The landlord may pay this amount to the tenant directly, or the landlord and tenant may agree that the tenant can forgo paying the rent that month.

The obvious purposes behind this provision are to provide tenants with some financial assistance with their impending move as well as to offer them some compensation for losing their protection against exorbitant rent increases. There is a more subtle purpose to the relocation assistance as well, however. If there were no cost whatsoever to doing no-fault tenancy terminations, landlords might be tempted to use them as a way to get around the rent caps. A landlord could terminate the tenancy by announcing plans for a major remodel, drop the remodel plan the moment the tenant was out, and proceed to rent to a new tenant at a rental rate beyond what would have been permissible to charge the former tenant. The relocation assistance requirements acts as at least a partial deterrent to this type of maneuver. A landlord could still try to use a no-fault termination to make an end run around the anti-rent gouging caps, but the landlord would have to pay the relocation assistance money to do so.

8. Constitutional analysis regarding the right to fair return

California has never before had a statewide restriction on the ability of landlords to raise rents. Local rent control ordinances, however, have been a frequent topic of litigation. Such ordinances have frequently been challenged on constitutional grounds. In general, the California courts have upheld laws limiting rent increases as valid under the exercise of police powers. (*Birkenfeld v. Berkeley* (1976) 17 Cal.3d 129, 140.) However, the courts have found some limitations on rent increases to be unconstitutional if they did not follow certain dictates. In particular, the courts have ruled that laws limiting rent increases must still enable landlords to obtain a fair return on their investment and they must not create such significant procedural hurdles that the landlord is effectively prevented from obtaining a fair return on their investment. (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, *aff'd* (1986) 475 US 260.) As this bill does not create any procedural hurdles to obtaining a rent increase beyond those in existing law (provision of advance notice pursuant to Civil Code Section 827), the only question is whether the bill might ever prevent landlords from obtaining a fair return on their investment.

As an initial matter, it is worth noting that the courts have repeatedly upheld local rent control laws with far stricter limitations on permissible rent increases than those proposed by the bill. Additionally, according to the author, the proposed rent ceiling of 7 percent plus inflation enables a quite favorable return for a property owner. The author cites Bureau of Labor Statistics data showing that 7 percent plus inflation is, on average, 150 percent higher than the actual median annual rent increase in our state's largest regions. In other words, the bill does not come close to preventing landlords from getting back the return they could rationally expect the rental market to bear.

The courts have not articulated a precise test for what constitutes a fair return on investment in the context of residential rent. In fact, the courts have resisted requiring any particular formula for permissible limitations on rent control. (*Fisher, supra*, 37 Cal.3d 644 at 680.) Any method for calculating permissible rent increases is valid so long as it does not lead to confiscatory results. (*Ibid.*) This does not mean that limitations on rent increases are constitutionally problematic merely because they reduce appreciation or actual property value. (*Id.* at 685-6.) Rather, the cases generally find that a limitation on rent increase only goes too far if it forces the landlord into a net operating loss by preventing the landlord from adjusting rent for inflation or other costs of doing business. (*TB Oceanside, LP v. City of Oceanside* (2007) 156 Cal.App. 4th 1355.)

This bill would allow annual rent increases of 7 percent plus inflation up to a hard cap at 10 percent. Since that formula directly adjusts for inflation, it allows for the possibility of a fair return unless inflation were to rise dramatically above what it has been for the past several decades. Similarly, the permissible rent increases under the bill are high enough that, in almost every imaginable circumstance, they permit a landlord to maintain a steady net operating income. The opponents raise scenarios in which the landlord must make a large investment; replacing a roof, for example. Even in a fairly extreme scenario, however, a landlord should be able to obtain a fair return relatively quickly between amortizing the cost of the repair and raising rents as permitted by the

bill. In short, the bill does not appear to deprive landlords of the ability to obtain a fair return.

9. Differing viewpoints on what the annual limit on rent increases should be

There are essentially three different viewpoints regarding the maximum annual rent increases allowed under this bill. The first viewpoint comes predominantly from landlords who oppose the bill on the ground that a 10 percent upper cap on annual rent increases is too restrictive. From this perspective, almost any upper limit on rent increases would be objectionable as an infringement on property rights and the operation of the free market. The second viewpoint is that of proponents of the bill, who either believe that the 10 percent cap proposed by the bill is reasonable or that it is too high, but better than no cap at all. The third viewpoint is that of opponents of the bill who believe that rent caps are needed, but that limits proposed by this bill are so high that they do little to help the vast majority of tenants and may in fact hurt tenants by providing an implicit stamp of legislative approval on annual rent hikes of as much as 10 percent.

10. Arguments about the potential impact of the bill on investments in housing supply

A common argument against limiting rent increases is that developers and property owners will be less willing to spend on constructing or upgrading housing if their potential return on investment is diminished. There is some variation, but most studies of the effects of rent control seem to bear this theory out.⁵ Some stakeholders have raised this point in opposition to this bill. According to this line of thinking, enacting limitations on rent increases is precisely the wrong response to California's housing affordability crisis, because only a massive increase in supply can bring down prices in the long-run, and restrictions on rent increases will diminish the incentive to build. Proponents of rent control – that is, much stronger limitation on rent increases than that proposed by this bill – tend to downplay the impact on supply. In addition, proponents of limitations on rent increase point out that existing California law places no limitations on rent increases and yet the state still faces an extreme shortage in housing supply. Even if unrestricted rent increases help incentivize housing construction, these rent control enthusiasts argue, it takes years to bring new housing online. In the meantime, people are being displaced from their homes.

This bill cuts something of a middle ground on all of these issues. In response to the concern that the bill could otherwise discourage new housing development, the author has exempted new construction – buildings up to 10 years old – from the bill. In response to the argument that strict rent control could dissuade landlords from

⁵ See, Taylor, *Letter to Attorney General Becerra Reviewing the Proposed Statutory Initiative Pertaining to Rent Control* (Dec. 12, 2017) California Legislative Analyst's Office https://sjud.senate.ca.gov/sites/sjud.senate.ca.gov/files/ctools/lao_-_fiscal-impact-estimate-report17-0041.pdf (as of Jun. 25, 2019).

investing in maintenance and upgrades to their property, the bill steers clear of the sort of rent control model that cities like Oakland, Los Angeles, San Francisco, and Santa Monica have long had. The bill deploys, instead, something more accurately described as anti-rent gouging: a far more landlord-friendly model that permits significant rent annual rent increases but outlaws major rent spikes of over 10 percent. Finally, anticipating that promised expansions in housing supply will eventually come to fruition, the bill sunsets after three years, providing short-term relief for tenants who are being hit hard right now, while allowing for the possibility that increased supply will eventually stabilize the market and thereby eliminate the need for any legal restrictions on rent increases.

11. Proposed amendments

In order to address the issues set forth in the Comments, above, among other things, the author proposes to incorporate amendments into the bill that would:

- specify that the meaning of the term “owner” in the bill is meant to be consistent with existing definitions of that term in the Civil Code;
- clarify that if, between March 15, 2019 and January 1, 2020, a landlord has raised or does raise the rent beyond what would be permissible under the bill, then the applicable rent on January 1, 2020 will be the rental rate as of March 15, 2019 plus the maximum permissible rent increase under the bill. Further clarifies that the landlord shall not be liable to the tenant for the higher rental amount paid prior to January 1, 2020;
- require the relevant notices about tenants’ rights under the bill to be provided in the language in which the lease is negotiated;
- specify when the landlord must make relocation assistance payments; and
- provide that a landlord’s failure to strictly comply with the relocation assistance payment provisions renders the notice of termination of tenancy void.

A mock-up of the amendments in context is attached to this analysis.

12. Arguments in support of the bill

According to the author:

California is in a housing crisis. Most of California’s 17 million renters do not have safe, secure, and affordable housing. Over half of renters and 80 percent of low-income renters are rent-burdened, meaning they pay over 30 percent of their income towards rent. This leaves less money for families to spend on other necessities like food, healthcare, transportation, and education. Less than 20 percent of renters live in rent-controlled units, leaving the vast majority of renters with no certainty about the size of their next rent increase, or protections against frivolous evictions.

This uncertainty creates a tremendous psychological and economic burden. Having no way of knowing when or how much their next rent increase will be, or whether they will be able to keep their home, renters cannot plan for their own housing stability. This increased stress can lead to negative mental and physical health outcomes for family members of all ages. Increasingly, it is also leading to homelessness. In Los Angeles, the 2019 homelessness count revealed that 23% of the unsheltered people experiencing homelessness—more than 9,200 people—were homeless for the first time last year. The majority (53%) cited economic hardship as the cause.

AB 1482 will protect nearly three million rental households in California by creating price stability and certainty, enabling renters and families to be better able to plan for their future by removing the risk of large and unexpected rent increases. [...]

Renters shouldn't have to choose between paying rent and keeping a roof over their heads or feeding their families. AB 1482 takes the choice off the table and makes it easier for renters to stay in their neighborhoods.

As sponsors of the bill, the Alliance of Californians for Community Empowerment Action, Public Advocates, and Western Center on Law & Poverty write:

As our state seeks to address the housing crisis, we must ensure the solutions include measures to protect renters from drastic rent increases which predictably displace families from their homes and drive them into homelessness. In recent months, each of our organizations has heard from renters who have received massive rent increases, sometimes doubling or even tripling their rent, on very short notice. These rent increases are not absorbable for working families, no matter how much notice is given, and only serve to drive renters from their homes and exacerbate the housing crisis. [...]

The bill does not impose rent control, but simply guards against the most drastic and disruptive rent increases in places where tenants have no other protections.

In support, the Partnership for Working Families writes:

Currently, the majority of Californians who rent live under the constant threat of landlords imposing unlimited rent increases that

can push them out of their homes or leave them unable to pay their other bills. Rooted in communities across the state who are calling for a modicum of protection, we urge an “aye” vote on this reasonable and vitally important bill.

Astronomical rent increases are striking every region that we represent. In Santa Maria, landlords have raised the average monthly rent 28% in the last four years alone. In San Jose, there is no neighborhood where two minimum wage earners can afford to live. In Concord, landlords have raised the median monthly rent for two-bedroom apartments by 61% in the last seven years. With renters pitted against each other in a housing shortage, landlords are free to increase rents unchecked by the State - hiking prices not because they are providing better housing but simply because they can. [...]

Spiking rents combine with no-cause evictions to turbocharge displacement across the state; for this reason, we also supported AB 1481 (Grayson and Bonta - just cause eviction protections) and believe that these protections must go hand in hand.

13. Arguments in opposition to the bill

In opposition to the bill, the California Apartment Association, the California Business Properties Association, the California Chamber of Commerce, and the California Mortgage Bankers Association write:

Study after study has demonstrated that price controls end up crippling the commodity that is controlled, including housing. There may be a short-term reduction in the price of rent-controlled units, but over the mid to long run, controlling rental prices decreases inventory as property owners remove units from the market, and construction of new rental housing slows. As rental units dwindle in a city or region, working-class families, seniors, and others in need experience the most harm.

AB 1482 would further complicate California’s ongoing housing crisis and would have very serious and harmful consequences to our economy. Governor Newsom has called for the construction of 3.5 million new housing units by 2025, or an average of 500,000 a year. Considering that California has built an average of 80,000 new homes per year over the past decade, AB 1482 will certainly get in the way of this goal.

In further opposition to the bill, the AIDS Healthcare Foundation writes:

AB 1482 is the appropriate policy response to a rental crisis in which some unscrupulous landlords have jacked up rent by very high percentages, in a few high profile cases 300% or more. We agree such rent increases are contributing massively to the shortage in rental housing and the debilitating rent burden on many tenants.

Unfortunately, the bill in its current form addresses the 300% aberration but fails to correct the far more ubiquitous problem, which is landlords who raise rents beyond getting a fair return on their investment; they may not be raising eyebrows, but they are pricing more and more low-income tenants out of their homes.

Even worse, the bill creates a new floor for landlords who will now have the state's permission to increase rents by 8% to 10% every year for the next three years.

SUPPORT

Alliance of Californians for Community Empowerment Action (sponsor)

PICO California (sponsor)

Public Advocates (sponsor)

Western Center on Law and Poverty (sponsor)

Abundant Housing Los Angeles

City of Alameda

Alliance for Community Transit - Los Angeles

American Civil Liberties Union of California

American Federation of State, County and Municipal Employees, AFL-CIO, Local 3299

Asian Americans Advancing Justice - California

Asian Americans and Pacific Islanders for Civic Empowerment Education Fund

Asian Pacific Environmental Network

Association of Bay Area Governments

Bay Area Legal Aid

Bay Area Regional Health Inequities Initiative

Bend the Arc: Jewish Action Southern California

Bricklayers & Allied Craftworkers

Bulosan Center for Filipino Studies, at University of California, Davis

California Alliance for Retired Americans

California Calls

California Coalition for Rural Housing

California Community Builders

California Conference Board of the Amalgamated Transit Union

California Conference of Machinists

California Labor Federation, AFL-CIO
California Renters Legal Advocacy and Education Fund
California Rural Legal Assistance Foundation
California State Council of Laborers
California Teachers Association
California Teamsters Public Affairs Council
California YIMBY
Carpenters & Joiners of America
Center on Policy Initiatives San Diego
Central Coast Alliance United for a Sustainable Economy
Central Valley Empowerment Alliance
Chan Zuckerberg Initiative
City of Los Angeles
Climateplan
Coalition for Humane Immigrant Rights
Congregations Organized for Prophetic Engagement
Corporation for Supportive Housing
Courage Campaign
Disability Rights California
Drug Policy Alliance
EAH Housing
East Bay Community Law Center
East Bay for Every One
Eden Housing
Engineers and Scientists of California, Local 20, IFPTE, AFL-CIO & CLC
Enterprise Community Partners, Inc.
Environmental Health Coalition
Faith in Action Bay Area
Faith in the Valley
Gamaliel of California
Eric Garcetti, Mayor, City of Los Angeles
Alan Haffa, Councilmember, City of Monterey
Hamilton Families
Heat & Frost Insulators & Allied Workers
Hillcrest Indivisible
House Sacramento
Hunger Action Los Angeles, Inc.
IBEW
Indivisible: San Diego Central
Inlandboatman's Union of the Pacific
International Brotherhood of Boilermakers
Iron Workers
The Kennedy Commission
Korean Resource Center

Koreatown Immigrant Workers Alliance
LA Forward
La Raza Community Resource Center
LA Voice
Latino Coalition for a Healthy California
Latinos United for a New America
Law Foundation of Silicon Valley
Leadership Counsel for Justice and Accountability
League of Women Voters of California
Legal Services for Prisoners with Children
Los Angeles County Board of Supervisors
Los Angeles Homeless Services Authority
Metropolitan Transportation Commission
Midpen Housing Corporation
Mission Neighborhood Centers, Inc.
Mission Neighborhood Health Center
Monument Impact
National Association of Social Workers, California Chapter
National Union of Healthcare Workers
Neighborhood Legal Services of Los Angeles
Non-Profit Housing Association of Northern California
North Bay Organizing Project
Oakland Tenants Union
Operating Engineers
Operative Plasterers & Cement Masons
Orange County Civic Engagement Table
Orange County Communities Organized for Responsible Development
Orange County Congregation Community Organization
Painters & Allied Trades
Partnership for Working Families
Peace and Freedom Party of California
People Organized for Westside Renewal
Planning and Conservation League
Policylink
Postmates
Power California
Professional & Technical Engineers, Local 21, IFPTE, AFL-CIO
Public Counsel
Public Interest Law Project
Public Law Center
Related California
Roofers, Waterproofers & Allied Workers
Sacramento Filipinx LGTBTQIA
Sacred Heart Community Service

San Francisco Foundation
City of Santa Monica
Santa Monica Rent Control Board
Service Employees International Union California
Sheet Metal Workers
Silicon Valley Community Foundation
SOMOS Mayfair
Southern California Association of Nonprofit Housing
State Building & Construction Trades Council of California
Strategic Actions for a Just Economy
TechEquity Collaborative
TransForm
UNITE-HERE, AFL-CIO
UNITE-HERE, Local 19
United Association
United Auto Workers, Local 2865
United Food and Commercial Workers, Local 648 San Francisco
United Food and Commercial Workers, Western States Council
United Teachers Los Angeles
Utility Workers Union of America
Venice Community Housing Corporation
Viet Vote San Diego
Warehouse Worker Resource Center
WestCity of West Hollywood
Working Partnerships USA
YIMBY Action
216 individuals

OPPOSITION

Aids Healthcare Foundation
American G.I. Forum
American Legion
AMVETS, Department of California
Apartment Association, California Southern Cities
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
Bay Area Council
Building Industry Association of the Bay Area
California Apartment Association
California Association of Realtors
California Business Properties Association
California Business Roundtable
California Chamber of Commerce

California Council for Affordable Housing
California Mortgage Bankers Association
California Rental Housing Association
California Taxpayer Association
Community Legal Services in East Palo Alto
East Bay Rental Housing Association
Essex Property Trust
Housing for All Burlingame
Long Beach Area Chamber of Commerce
National Rental Home Council
North Valley Property Owners Association
Nor Cal Rental Property Association
Oakland Metropolitan Chamber of Commerce
One San Mateo
Orange County Business Council
Prometheus Real Estate Group
Related California
San Diego County Apartment Association
San Gabriel Valley Economic Partnership
Small Property Owners of San Francisco Institute
Southern California Rental Housing Association
San Francisco Bay Area Planning and Urban Research Association
TMG Partners
Youth United For Community Action
5 individuals

RELATED LEGISLATION

Pending Legislation:

AB 1110 (Friedman, 2019) extends the notice period required for a landlord to impose a large rent increase on a tenant in a periodic tenancy, which are almost always month-to-month tenancies. Specifically, a landlord would have to give 90 days' notice to a tenant before imposing rent increases of between 10 and 15 percent, and 120 days' notice for any increase above 15 percent. AB 1110 is currently pending consideration on the Senate Floor.

AB 36 (Bloom, 2019) authorizes local jurisdictions to apply rent control to units more than ten years old and/or single-family homes owned by a person who owns up to two units in the jurisdiction. AB 36 is currently pending referral in the Assembly Rules Committee.

AB 1481 (Bonta, 2019) requires a landlord to have and to state a just cause when terminating a tenancy. The bill also requires a landlord to pay relocation assistance for terminated leases. The content of AB 1481 was combined into this bill.

AB 1697 (Grayson) (2019): Prohibits evictions without just cause for tenants with at least twelve months occupancy, and requires relocation assistance for terminated leases. The content of this bill was combined into AB 1481.

Prior Legislation:

AB 2925 (Bonta, 2018) would have. AB 2925 failed passage on the Assembly Floor.

AB 1506 (Bloom, 2018) would have repealed the Costa-Hawkins Rental Housing Act, thus authorizing local jurisdiction to impose limits on rent increases for newer construction and single-family homes, should they elect to do so. AB 1506 failed passage in the Assembly Committee on Housing and Community Development.

AB 2925 (Bonta, 2018) would have required landlord to have and to state a just cause in order to terminate a tenancy. AB 2925 was defeated on the Assembly Floor.

PRIOR VOTES:

Assembly Floor (Ayes 43, Noes 31)

Assembly Appropriations Committee (Ayes 12, Noes 4)

Assembly Housing and Community Development Committee (Ayes 6, Noes 1)

Amended Mock-up for 2019-2020 AB-1482 (Chiu (A))

**Mock-up based on Version Number 95 - Amended Senate 6/28/19
Submitted by: Griffiths, SJUD**

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1946.2 is added to the Civil Code, to read:

1946.2. (a) Notwithstanding any other law, an owner of residential real property, in which the tenant has occupied the residential real property for 12 months or more, with or without a written lease, shall not terminate the lease without just cause, which shall be stated in the written notice to terminate tenancy set forth in Section 1946.1.

(b) For purposes of this section, “just cause” includes either of the following:

(1) At-fault just cause, which is any of the following:

(A) Default in the payment of rent.

(B) A breach of a material term of the lease, as described in paragraph (3) of Section 1161 of the Code of Civil Procedure, including, but not limited to, violation of a provision of the lease after being issued a written notice to correct the violation.

(C) Maintaining, committing, or permitting the maintenance or commission of a nuisance as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(D) Committing waste as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(E) The tenant had a written lease that terminated on or after January 1, 2020, and after a written request or demand from the owner, the tenant has refused to execute a written extension or renewal of the lease for an additional term of similar duration with similar provisions, provided that those terms do not violate this section or any other provision of law.

(F) Criminal activity by the tenant on the premises, including any common areas, or any criminal threat, as defined in subdivision (a) of Section 422 of the Penal Code, directed at any owner or agent of the owner of the premises.

(G) Assigning or subletting the premises in violation of the tenant’s lease.

(H) The tenant's refusal to allow the owner to enter the dwelling pursuant to a request consistent with Section 1954 of the Civil Code.

(I) Using the premises for an unlawful purpose as described in paragraph (4) of Section 1161 of the Code of Civil Procedure.

(2) No-fault just cause, which includes any of the following:

(A) (i) Intent to occupy the residential real property by the owner or their spouse, children, grandchildren, parents, or grandparents.

(ii) For leases entered into on or after January 1, 2020, clause (i) shall apply only if the tenant agrees, in writing, to the termination, or if a provision of the lease allows the owner to terminate the lease if the owner, or their spouse, children, grandchildren, parents, or grandparents, unilaterally decides to occupy the residential property.

(B) Withdrawal of the residential property from the rental market.

(C) Unsafe habitation, as determined by a government agency that has issued an order to vacate, order to comply, or other order that necessitates vacating the residential property.

(D) Intent to demolish or to substantially remodel.

(c) Before an owner of residential real property issues a tenant a notice to terminate tenancy for just cause that is a curable lease violation, the owner shall first give notice of the violation to the tenant with an opportunity to cure the violation pursuant to paragraph (3) of Section 1161 of the Code of Civil Procedure.

(d) (1) If an owner of residential real property issues a no-fault just cause notice to terminate a tenancy to a tenant who has resided on the residential real property for 12 months or more, the owner shall assist the tenant, regardless of the tenant's income, to relocate by providing a direct payment to the tenant as described in paragraph (3).

(2) If an owner issues a notice to terminate tenancy for no-fault just cause, the owner shall notify the tenant of the tenant's right to relocation assistance pursuant to this section.

(3) The amount of relocation assistance shall be equal to one month of the tenant's rent that was in effect when the owner issued the notice to terminate the tenancy and shall be provided within five calendar days of service of the notice. The owner and tenant may also agree, in lieu of direct payment, to waive the payment of rent for the month after the notice is given.

(4) An owner's failure to strictly comply with this subdivision shall render the notice of termination void.

(e) This section shall not apply to the following types of residential real properties or residential circumstances:

(1) Transient and tourist hotel occupancy as defined in subdivision (b) of Section 1940.

(2) Housing accommodations in a nonprofit hospital, religious facility, or extended care facility.

(3) Dormitories owned and operated by an institution of higher education or a kindergarten and grades 1 to 12, inclusive, school.

(4) Housing accommodations in which the tenant shares bathroom or kitchen facilities with the owner who maintains their principal residence at the residential real property.

(5) Single-family owner-occupied residences, including a residence in which the owner-occupant rents or leases no more than two units or bedrooms, including, but not limited to, an accessory dwelling unit or a junior accessory dwelling unit.

(6) Housing that has been issued a certificate of occupancy within the previous 10 years.

(7) Housing that is a detached single-family residential dwelling unit that meets both of the following requirements:

(A) The owner is a natural person who owns and leases no more than 10 units and does not have an ownership interest in any other rental residential real property through any other entity.

(B) There is a written lease for the dwelling that includes a provision certifying that the owner meets the provisions of subparagraph (A) and notifying the tenant that the dwelling is not subject to this section.

(f) An owner of residential real property subject to this section shall provide notice to a tenant of the tenant's rights under this section at the beginning of the tenancy by providing an addendum to the lease which shall be signed by the tenant when the lease is signed. Provision of the notice shall be subject to section 1632.

(g) This section does not prevent the enforcement of an existing local rule or ordinance, or the adoption of a local rule or ordinance that is consistent with Chapter 2.7 (commencing with Section 1954.50), that requires just cause for termination of a residential tenancy that further limits or specifies the allowable reasons for eviction, requires longer notice or additional procedures for evicting tenants, provides for higher relocation assistance amounts, or is determined to provide a higher level of tenant protections than this section.

(h) Any waiver of the rights under this section shall be void as contrary to public policy.

(i) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

(j) For the purposes of this section, "owner" shall mean the same as defined in Section 1954.51.

SEC. 2. Section 1947.12 is added to the Civil Code, to read:

1947.12. (a) Subject to the provisions of subdivision (b), an owner of residential real property shall not increase the rental rate for that property more than once annually. The annual increase shall not exceed 7 percent plus the percentage change in the cost of living, or 10 percent, whichever is lower, of the lowest rental amount charged for that property at any time during the 12 months prior to the effective date of the increase.

(b) (1) Subdivision (a) shall apply to partial changes in tenancy of a residential rental property where one or more of the tenants remains an occupant in lawful possession of the property.

(2) Subdivision (a) shall not apply to new tenancies where no tenants from the prior lease remain an occupant in lawful possession of the residential real property.

(c) This section shall not apply to the following residential rental properties:

(1) Deed-restricted affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code.

(2) Dormitories constructed and maintained in connection with any higher education institution within the state for use and occupancy by students in attendance at the institution.

(3) Housing subject to any form of rent or price control through a public entity's valid exercise of its police power that restricts annual increases in the rental rate to an amount less than that provided in subdivision (a).

(4) Housing that has been issued a certificate of occupancy within the previous 10 years.

(5) Housing that is a detached single-family residential dwelling unit that meets both of the following requirements:

(A) The owner is a natural person who owns and leases no more than 10 units and does not lease any other residential property through any other entity.

(B) The dwelling has a written lease, compliant with section 1632—that includes a provision certifying that the owner meets the provisions of subparagraph (A) and notifying the tenant that the dwelling is not subject to this section.

(d) An owner shall provide notice of any increase in the rental rate, pursuant to subdivision (a), to each tenant in accordance with Section 827.

(e) (1) On or before January 1, 2023, the Legislative Analyst's Office shall report to the Legislature regarding the effectiveness of this section and Section 1947.13. The report shall include, but not be limited to, the impact of the rental rate cap pursuant to subdivision (a) on the housing market within the state.

(2) The report required by paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(f) For the purposes of this section, the following definitions shall apply:

(1) "Owner" shall mean the same as defined in Section 1954.51.

(2) "Percentage change in the cost of living" means the percentage change from April 1 of the prior year to April 1 of the current year in the regional Consumer Price Index for the region where the residential real property is located, as published by the United States Bureau of Labor Statistics. If a regional index is not available, the California Consumer Price Index for All Urban Consumers for all items, as determined by the Department of Industrial Relations, shall apply.

(3) "Residential real property" means any dwelling or unit that is intended for human habitation.

(4) "Tenancy" means the lawful occupation of residential real property and includes a lease or sublease.

(g) (1) This section shall apply to all rent increases subject to subdivision (a) occurring on or after March 15, 2019. This section shall become operative January 1, 2020.

(2) In the event that an owner has increased the rent by more than the amount permissible under subdivision (a) between March 15, 2019 and January 1, 2020, then the following shall apply:

(A) The applicable rent on January 1, 2020 shall be the rent as of March 15, 2019 plus the maximum permissible increase under subdivision (a).

(B) An owner shall not be liable to the tenant for any corresponding rent overpayment.

(h) Any waiver of the rights under this section shall be void as contrary to public policy.

(i) This section shall remain in effect until January 1, 2023, and as of that date is repealed.

(j) It is the intent of the Legislature that this section is intended to respond to the unique circumstances of the current housing crisis, and to only apply for a limited time, as described in subdivision (i).

SEC. 3. Section 1947.13 is added to the Civil Code, to read:

1947.13. (a) Notwithstanding Section 1947.12, upon the expiration of rental restrictions, the owner of an assisted housing development who demonstrates under penalty of perjury, compliance with all applicable provisions of Sections 65863.10, 65863.11, and 65863.13 of the Government Code, and any other applicable law or regulation intended to promote the preservation of assisted housing may establish the initial unassisted rental rate for units in the applicable housing development. Any subsequent rent increase in the development shall be subject to Section 1947.12.

(b) For purposes of this section:

(1) "Assisted housing development" has the same meaning as defined in paragraph (3) of subdivision (a) of Section 65863.10 of the Government Code.

(2) "Expiration of rental restrictions" has the same meaning as defined in paragraph (5) of subdivision (a) of Section 65863.10 of the Government Code.

(c) This section shall remain in effect until January 1, 2023, and as of that date is repealed.

(d) Any waiver of the rights under this section shall be void as contrary to public policy.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.