

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2015-2016 Regular Session

SB 775 (Allen)
Version: April 23, 2015
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Fiscal: No
Urgency: No
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SUBJECT

Tenancy: Rent Control: Certification

DESCRIPTION

Existing law, the Petris Act, requires jurisdictions with a local ordinance or charter controlling residential rent prices that requires the registration of rents to provide for the certification of permissible rent levels according to a specified process. This bill would amend the Petris Act to state that its rent level certification provisions would not apply to tenancies commencing on or after January 1, 1999, for which the owner of the property may establish initial rent under the Costa-Hawkins Rental Housing Act.

BACKGROUND

In 1986, the Legislature adopted the Petris Act (Act) (Civ. Code Secs. 1947.7,1947.8), which directs cities with rent control laws requiring rent level registration to certify the maximum allowable rent for every rent controlled unit under its jurisdiction. Upon the request of a landlord or tenant, the Act requires the city to provide a certificate or other document reflecting the permissible rent level for a rent controlled unit to the requesting party, or, if no certificate is on file, to provide a certification process to determine the maximum allowable rent. The Act requires cities to provide the permissible rent certificate to the requesting party within 5 business days of the date of request, and sets certain parameters for cities to follow in establishing their certification processes.

Nine years later, the Legislature enacted the Costa-Hawkins Rental Housing Act (Civ. Code Sec. 1954.50 et seq.). Generally speaking, the Costa-Hawkins Rental Housing Act (Costa-Hawkins) preempts the local adoption of "strict vacancy control" rent control laws that do not allow a property owner or landlord to increase the rent when a unit is vacated and a new tenancy is created. Instead, Costa-Hawkins permitted the "vacancy decontrol-recontrol" form of local rent control where an owner is authorized to increase the rent without restriction to a new tenant when a former rent-controlled tenancy was

voluntarily vacated, abandoned, or terminated by lawful eviction. The new rent for the new tenant would then be subject to local rent controls for the duration of that tenancy. Costa-Hawkins specified that its provisions would come into force on January 1, 1999. Costa-Hawkins protected the tenancy rights of all occupants “in place” prior to January 1, 1996, and provided that the owner could increase the rent to any sublessee or assignee where the original occupant no longer permanently resides.

According to the author, some individuals are attempting to take advantage of the 5-day certification process in the Petris Act to certify rent levels at higher or lower rates while either the landlord or tenant is not available to contest the certification. This bill would amend the Petris Act to state that its provisions would not apply to tenancies commencing on or after January 1, 1999 – the effective date of Costa-Hawkins.

CHANGES TO EXISTING LAW

Existing law, the Petris Act, states that if an ordinance or charter controls or establishes a system of controls on the price at which residential rental units may be offered for rent or lease and requires the registration of rents, the ordinance or charter, or any regulation adopted pursuant thereto, shall provide for the establishment and certification of permissible rent levels for the registered rental units, and any changes thereafter to those rent levels, by the local agency, as specified. Existing law states that the ordinance, charter, or regulation shall provide a process for the establishment and certification of permissible rent levels within one year after it is adopted, as specified. (Civ. Code Secs. 1947.8(a), 1947.7(b).)

Existing law states that upon the request of the landlord or the tenant, a local agency shall provide the landlord and the tenant with a certificate or other documentation reflecting the permissible rent levels of a rental unit. Existing law specifies that the landlord or tenant may appeal the determination of the permissible rent levels reflected in the certificate, and that the permissible rent levels reflected in the certificate or other documentation shall, in the absence of intentional misrepresentation or fraud, be binding and conclusive upon the local agency unless the determination of the permissible rent levels is being appealed. (Civ. Code Secs. 1947.8(b), 1947.8(c).)

Existing law provides that after the establishment and certification of permissible rent levels, the local agency shall, upon the request of the landlord or the tenant, provide the landlord and tenant with a certificate of the permissible rent levels of the rental unit. Existing law specifies that the certificate shall be issued within five business days from the date of request by the landlord or the tenant. (Civ. Code Sec. 1947.8(c).)

Existing law states that the landlord or the tenant may appeal the determination of the permissible rent levels reflected in the certificate, and that such an appeal shall be filed with the local agency within 15 days from issuance of the certificate, except as specified. Existing law provides that the local agency shall notify, in writing, the landlord and the

tenant of its decision within 60 days following the filing of the appeal. (Civ. Code Sec. 1947.8(c).)

Existing law provides that an owner of a residential rental unit who is in substantial compliance with an ordinance or charter that controls or establishes a system of controls on the price at which residential rental units may be offered for rent or lease and which requires the registration of rents, or any regulation adopted pursuant thereto, shall not be assessed a penalty or any other sanction for noncompliance with the ordinance, charter, or regulation. (Civ. Code Sec. 1947.7(b).)

Existing law, the Costa-Hawkins Rental Housing Act, states that notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit if it has a certificate of occupancy issued after February 1, 1995, or it has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units, as specified. (Civ. Code Sec. 1954.52(a).)

Existing law provides that, for a dwelling or unit in which the initial or subsequent rental rates are controlled by an ordinance or charter provision in effect on January 1, 1995, the owner of such real property may establish the initial and all subsequent rental rates for all existing and new tenancies in effect on or after January 1, 1999, if the tenancy in effect on or after January 1, 1999, was created between January 1, 1996, and December 31, 1998. Existing law specifies that commencing on January 1, 1999, an owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all new tenancies if the previous tenancy was in effect on December 31, 1995, except as specified. (Civ. Code Sec. 1954.52(a).)

This bill would provide that the provisions of the Petris Act governing the establishment and certification of permissible rent levels shall not, on and after January 1, 2016, apply to tenancies commencing on or after January 1, 1999, for which the owner of residential property may establish the initial rent under the Costa-Hawkins Rental Housing Act.

COMMENT

1. Stated need for the bill

According to the author:

Existing law mandates that all rent control jurisdictions that require the registration of rents provide for the establishment and certification of permissible rent levels for registered rental units. At the time the law was enacted, vacancy control was still in effect in several local jurisdictions. The purpose at the time of enactment was to provide landlords, in particular, with certainty as to the maximum rent level at

which they could offer a rental unit. At that time, controlled rents were determined by a “base rent” established through an initial, rental unit registration process. Even when a unit was vacant, a landlord could request a certificate of permissible rent levels prior to renting a rental unit, since base rents were set at an established level that determined all subsequent rent levels. With the full implementation of the Costa-Hawkins Rental Housing Act (Civil Code [Secs.] 1954.50-1954.535) in 1999, landlords were given authority to set a new, market-level base rent at the start of the vast majority of new tenancies. Local agencies that require registration of new tenancies rarely have any role in the establishment of the initial, permissible rent level for any tenancy commencing from 1999 onward. Yet, the current law regarding rent level certification fails to account for this fact . . .

The problem with the current law is that it has created opportunities for landlords and tenants to manipulate the certification process to their advantage, rather than for its intended purpose of creating certainty for the parties and the local agency. For example, a landlord or a tenant, knowing that a local agency does not have accurate information regarding a current tenancy, will seek a certificate that will be premised upon a higher or lower rent than what was initially agreed to by the parties. Because current law permits the initial rent to be established by the agreement of the parties, they are in the better position to ascertain the rent than the local agency. Not surprisingly, sophisticated landlords and tenants, knowing that the mandate to issue a certificate within 5 business days is still required of local agencies, will seek the certificate solely to obtain an advantage or create confusion in a dispute over rent levels, overcharges and/or an unlawful detainer proceeding. Local agency staff is then put in the difficult position of scrambling to ascertain a correct rent level with inadequate information, and to then issue a certificate that may impact the outcome of ongoing litigation.

By amending existing law to remove the certification requirement for post-January 1, 1999 rents established by the landlord, local agencies would no longer be placed in the impossible position of issuing binding certifications based on incomplete or absent information. The amendment would also protect the integrity of any contemporaneous administrative or judicial processes for establishing rent levels or overcharges by removing the ability to use the certification process to obfuscate the issues in those proceedings.

2. Would not impact Petris Act tenancies

When the Legislature passed the Costa-Hawkins Rental Housing Act (Costa-Hawkins) in 1995, it mandated a phased-in process of decontrolling the initial rental price of new tenancies in rent-controlled properties. Costa-Hawkins authorized landlords to establish initial and subsequent rental rates for tenancies created after the act entered into force on January 1, 1996, and left undisturbed tenancies created on or before December 31, 1995. For those tenancies still in existence today that were established

prior to January 1, 1996, the Petris Act's maximum rent certification process may still apply. This bill would not impact those long-term tenancies. By specifying that the Petris Act's certification provisions shall not apply to tenancies commenced after January 1, 1999, this bill effectively places a terminal date on tenancies subject to the Petris Act. Importantly, this terminal date occurs after full implementation of the Costa-Hawkins Rental Housing Act. As a consequence, this bill would only impact tenancies in rent-controlled properties that are already subject to Costa-Hawkins, and would not reach back to any tenancies still governed by the Petris Act.

Support: City of West Hollywood

Opposition: None Known

HISTORY

Source: Author

Related Pending Legislation: None Known

Prior Legislation: None Known
