

DATE: February 15, 2022

BILL NO.: SB 521

COMMITTEE: Senate Judicial Proceedings Committee

TITLE: Landlord and Tenant - Access to Counsel in Evictions Special Fund - Mandatory
Appropriation

SPONSORS: Senators Hettleman, Smith, Waldstreicher, West, and Zucker

Letter of Information

Description of Bill:

SB 521 would require the Governor to appropriate an indeterminate amount of hypothetical future federal rental assistance money to provide legal services to the Access to Counsel in Evictions Special Fund. This bill does not specify the particular fund source, but describes it as federal rental assistance funding for which legal services is an allowable purpose.

Background:

SB 521 would require the Administration to redirect to the Access to Counsel in Evictions program all federal rental assistance funding that is eligible to support legal services from any future federal appropriations. If this is intended to be funding for which both rental assistance and legal services are eligible, but which is not a clearly defined federal “rental assistance” program, then this program could have a significantly detrimental impact on the agency’s homelessness and anti-poverty programs. The following analysis is based on the assumption that the federal funds intended to be targeted are those that are more similar to the recent Emergency Rental Assistance Program (ERAP).

ERAP was established by the Consolidated Appropriations Act, 2021 and received a second round of funding (referred to as ERAP 2) through the American Rescue Plan Act. ERAP was designed as a rental assistance plan from the ground up, and allowed for up to 10% of funds to be used for housing stability services. Housing stability services include case management activities for low and moderate income households, specialized services for individuals with disabilities and seniors, housing-related services for survivors of domestic abuse or human trafficking, and housing counseling, as well as legal services.

The funds being used by our local government and nonprofit partners to support those other housing stability services serve the most vulnerable populations and are a necessary part of the support system provided by the State.



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While we do not believe that this bill would affect existing ERAP funds due to the award timeline for these funds, it is also worth noting that we are not aware of any intention on the part of Congress to extend or expand further funds for this purpose. This leaves the possibility that this bill could redirect future funds, without knowing the opportunity cost of those funds, which we believe is a poor approach to fiscal management, and could harm individuals at risk of homelessness, persons with disabilities, survivors of domestic abuse and human trafficking, as well as other low income populations with special needs.

Over the course of the pandemic, this agency has allocated significant funding to support both the Access to Counsel in Evictions program, as well as legal services to support other vulnerable populations, including those at risk of foreclosure. Our nonprofit and local government partners have also provided support for legal services through funds that flow from our Department. We recently announced that we have set aside \$5.4 million to support Access to Counsel in Evictions, as well as a further \$4.4 million from the Homeowner Assistance Fund, which will support legal services for households facing foreclosure risk.

The Department reviews all funding decisions with a data-focused approach. Based on our analysis of eviction statistics, we believe the existing funds committed to legal services are sufficient for the present need, and we will continue to monitor and evaluate on an ongoing basis.

In addition, Congress frequently develops set asides for local jurisdictions with large populations, as was done for ERAP and as is the case for U.S. Department of Housing and Community Development Community Planning and Development (CPD) programs. To the extent that future funding may follow this model, this bill would disproportionately impact funding available to local jurisdictions with populations below that threshold who depend on the State for federal pass-through funding. In the case of ERAP, the county population threshold for direct funding was set at 200,000, encompassing eight jurisdictions, meaning that in a hypothetical third round of ERAP, assuming identical parameters, eight jurisdictions would receive direct funding from the federal government to administer as they please, while the remaining 16 counties would receive no funds for housing stability services for their most vulnerable populations.