

State Legislative Report 2003 Session

The 2003 session of the California Legislature was an unexpectedly mixed bag. Our high hopes at the start of the year that new Assembly members would make that body more progressive and renter-friendly were dashed. If anything, the opposite was true. Many bills did not move forward or were pared back markedly. In addition, the budget crisis and the recall both sapped attention and energy from all other issues.

Against this backdrop, however, there were some successes:

- SB 345 (Kuehl) was signed by the Governor. As passed, it:

1. Extends the 60-day “masking” of unlawful detainer court records statewide, and provides for permanent masking if the tenant prevails.

2. Requires the notice of termination (3-day, 30-day, or 60-day) to be attached to the complaint. It also requires any written rental agreement to be attached, unless the reason for the eviction is solely for nonpayment of rent. This provision goes into effect on 1 January 2005.

3. Requires public housing authorities to report to HCD each year regarding evictions (for any reason) of domestic violence victims in public housing.

4. Clarifies that a landlord and tenant may orally agree to a entry in limited situations.

SB 345 was shorn of its other provisions (see below).

- SB 90 (Torlakson) was signed by the Governor September 8th. It requires receipts to be attached to the itemization of security deposit deductions, if deductions were made for repairs and cleaning. A tenant may waive the requirement in writing after a notice to terminate the tenancy is given. No attachments are required if the deductions for repairs and cleaning do not exceed \$125; however, they must be provided if the tenant requests them after receiving the itemized statement. For repairs or cleaning done by the landlord or an employee, the time spent and the hourly rate charged must be disclosed.

If repairs by an outside entity cannot be made within the 21-day period for returning a deposit, the landlord may make a reasonable deduction if the name and contact information of the outside entity is provided and a final accounting is provided to the tenant when repairs are completed.

The bill was initiated by Senator Torlakson following a constituent complaint; Senator Torlakson asked Western Center to sponsor the bill for him.

- AB 647 (Nunez) was signed by the Governor. It enhances a tenant’s ability to bring an affirmative suit when there are cited code violations and provides for attorney fees in unlawful detainer actions when tenants prevails based on cited violations. Co-sponsored.

- AB 1217 (Leno) was signed by the Governor. As introduced, it would have exempted all residential hotels from the “Ellis Act”. As amended, it exempts hotels in Los Angeles, San Francisco, and San Diego built prior to 1990. Co-sponsored.

Additionally, there were successes in defending against challenges:

- AB 1202 (Montanez) would have explicitly authorized landlords to sell security deposit “insurance”: tenants would pay 1/6 the actual deposit amount, but remain fully obligated for any alleged damages and have far fewer procedural protections. The bill was made into 2-year bill after our opposition. It may be acted on next year.

- A proposal early in the year would have taken \$500 million statewide in redevelopment low and moderate income hous-

ing funds to help balance the budget. This was defeated. Eventually, \$135 million was taken from redevelopment agencies, but only from non-housing money.

- Attempts were made to take as much as \$200 million from Prop. 46 bond proceeds and fund projects already approved and financed with appropriations from prior budget years. We worked with Senator Burton to reduce the re-direction to \$40 million.

Against these successes were disappointments. The Owner Move-In portion of SB 345 was deleted following unbending opposition from the Realtors. Also cut were provisions to mask all eviction actions except when the landlord won at trial, along with provisions that would have allowed a tenant to make a late payment of rent after a UD was filed, and prohibited housing authorities from evicting innocent household members along with the perpetrator of a crime.

SB 90 were also narrowed — it was to shorten the time to return a security deposit.

SB 178 (Cedillo) would have clarified that the Costa-Hawkins prohibition on rent controls on new construction does not affect inclusionary zoning ordinances. It became a 2-year bill. AB 831 (Goldberg), which would have extended the time to answer an unlawful detainer from 5 days to 10 days, was defeated on the Assembly Floor.

A complete list of housing bills for this year follows below.

Summary of Housing Bills in the 2003 Legislative Session:

Landlord-Tenant Bills:

Enacted:

AB 309 (Chu): Foreign language contracts.

Requires that a contract (including a lease or rental agreement for a term longer than one month) is negotiated in Chinese, Tagalog, Vietnamese, or Korean, a written copy of the agreement in that language must be provided to the tenant (current law requires this only for agreements negotiated in Spanish).

AB 1059 (Lieber): Harrassment.

Provides that a landlord may not, for the purpose of influencing a tenant to vacate a rental unit: Use or threaten to use force, threats, or menacing conduct constituting a course of conduct that interferes with the tenant's right to quiet enjoyment of the premises in violation of existing law that would create an apprehension of harm in a reasonable person; or Commit a significant and intentional violation of a landlord's right to enter a unit. a tenant would be entitled to a civil penalty of up to \$2,000. Includes non-premption clause, as follows: "Nothing in this section shall . . . enlarge or diminish any ability of local government to regulate or enforce a prohibition against a landlord's harassment of a tenant."

AB 1217 (Leno): Residential hotels.

Would exempt residential hotels built before 1990 in Los Angeles, San Francisco, and San Diego from the Ellis Act. Owners have been claiming that the Ellis Act pre-empts local requirements.

AB 1384 (Maddox): Move-out inspections.

Clarifies that no move-out inspection is required if the tenancy is being terminated pursuant to a 3-day notice.

SB 90 (Torlakson): Security deposit returns.

See above.

SB 146 (Escutia): Translated contracts.

Would require foreign language contracts (including a lease or rental agreement for a term longer than one month) to include a translation of every term and condition (i.e., blank form contracts would not be acceptable).

SB 345 (Kuehl): Tenant rights.

See above.

SB 538 (Torlakson): Notices of expiring rent restrictions.

Requires prospective tenants to be notified of impending cancellation, expiration, or prepayment of subsidy contracts, loans, or rent level restrictions. Existing law only requires notice to current tenants.

Not Enacted:

AB 21 (Liu): 710 Freeway housing.

Would establish a task force to report on rents and conditions in CalTrans-owned property along the 710 freeway corridor in the Pasadena area. Author did not pursue bill after CalTrans agreed to participate in discussions to find a solution.

AB 210 (Nation): Smoking.

As of 1 January 2006: Would prohibit smoking in common areas of rental housing; would prohibit smoking inside units unless otherwise designated by landlord. Tenants in place as of that date may continue to smoke inside their residences. Never scheduled for committee hearing.

AB 418 (Pacheco): Process service.

Would have allowed, among other things, a process server to serve a prejudgment claim of right to possession by posting and mailing after obtaining a court order. This provision was eliminated after objections by tenant advocates. Other non-tenant provisions were enacted.

AB 831 (Goldberg): Unlawful detainer timeframes.

Would allow 10 days to answer an unlawful detainer, unless the action was based on unlawful use of the property; would exclude weekends and holidays from the 5-day period to act following a writ of possession; would allow a court to order a landlord to restore a tenant to possession after a writ executed as a result of fraud or mistake. Failed passage in the Assembly 33-33 (41 votes needed to pass).

AB 1202 (Montanez): Security deposit insurance.

Would expressly authorize nonrefundable security deposit bonds to be offered in lieu of or in conjunction with traditional security bonds; refund would only be granted if landlord terminated the tenancy in the first 90 days; would in effect allow the insurer to pursue a claim against the tenant for their own costs after re-imbursing a landlord; would expand tenant liability to damage in common areas; would provide few procedural safeguards for the tenant. Sponsored by SureDeposit, an insurance company. Bill was not brought up for a hearing after opposition from tenant groups; now a 2-year bill.

AB 1256 (Koretz): rent control.

Would replace existing Costa-Hawkins Act: would prohibit a locality from imposing rent controls on units less than 25 years old; would permit a locality to impose rent controls, including vacancy control, on all units (including single family) over 25 years old. Never set for hearing.

SB 178 (Cedillo): Inclusionary housing,

Would clarify that the Costa-Hawkins Act does not pre-empt a locality's ability to enact an inclusionary zoning ordinance that limits rent or income levels. Sponsored by Los Angeles Housing Law Project; agreement could not be reached with landlord groups. Further discussions are scheduled for the fall, although the election probably cancels.

Code Enforcement Bills:

Enacted:

AB 647 (Nunez): Code violation penalties.

Allows a tenant to sue affirmatively when a landlord issues a 3-day notice or a rent increase notice and cited serious code violations have remained unabated for 35 days. Under current law, suits are allowed only when a landlord demands or collects rent, and the waiting period is 60 days. The bill also allows a tenant defending an unlawful detainer when these conditions exist to collect attorneys fees. It also increases damages for a violation from \$1,000 to \$5,000.

AB 1034 (Mullin): Omnibus HCD code enforcement bill.

Expands the authority of localities to enforce, by lien, the collection of costs to include inspections; Expands the authority of a local government to order repairs; Allows for a shorter than 30 day notice to abate a nuisance or other violation of building standards if deemed necessary by the enforcement agency to prevent or remedy an immediate threat to health or safety; Allows an enforcement agency that anticipates that it will pursue remedies to require the owner to submit personal information to the agency within 10 days of recording notice; Requires a seller to file a "Notice of Conveyance of Substandard Property" with the recorder within 5 days after the transfer if a code violation has not yet been remedied; Requires a seller to provide personal information about the buyer and seller to the enforcement agency within five days after the transfer if a code violation has not yet been remedied; Provides that a receiver appointed by a court to assure building repairs are completed may be deemed a public officer; Provides that a locality may develop a list, for purposes of referral, of public or private agencies that finance or assist residential property rehabilitation or repair.

AB 1576 (Liu): Water heater bracing.

Provides that tenants cannot be evicted in order to effectuate water heater bracing; Provides that lack of bracing constitutes a nuisance.

SB 567 (Torlakson): Fines.

Increases the fines for violations of local building and safety codes determined to be infractions to up to \$100 for a first violation, up to \$500 for a second violation of the same ordinance within one year, and up to \$1,000 for each additional violation of the same ordinance within one year of the first violation.

Budget Bills:

Enacted:

AB 1765 (Budget Committee): Fiscal Year 2003-04 State Budget.

Housing provisions: \$40 million in Prop. 46 funds were re-directed to projects already in the pipeline (as much as \$200 million was proposed); Homeless shelter operating grants, which are not eligible under Prop. 46, were funded at \$5.3 million; Regional Housing Needs Assessment mandates for COGs and local governments were both suspended; Office of Migrant Services and Employee Housing received \$625,000 and \$721,000 respectively from the General Fund, thereby avoiding the need for massive rent increases; and a study of the housing inventory subject to expiring subsidies was funded.

SB 1045 (Budget Committee): Redevelopment funds transfer.

See listing under redevelopment.

SBX1 19 (Chesbro): FY 02-03 mid-year cuts.

Mid-year cuts to FY 2002-03 budget signed by the Governor in March: Eliminated \$11 million General Fund appropriation to the Farmworker Housing Grant Fund and \$5.5 million appropriation to the Self-Help Housing Fund enacted in the original FY 2002-03 budget bill; Permanently transfers \$1.9 million from the Predevelopment Loan Fund to the General Fund; Loans to the General Fund: \$7.3 million from the Housing Rehabilitation Loan Fund (\$20 million had been lent previously); \$3.4 million from the Self-Help Housing Program; \$2.1 million from the Mobilehome Park Purchase Fund (\$8 million lent previously); \$1.8 million from the Rental Housing Construction Fund; and \$1.6 million from the reserve account of the Emergency Housing and Assistance Program.

Fair Housing Bills:

Enacted:

AB 703 (Dymally): Racial discrimination definition.

Defines racial discrimination; expressly prohibit an individual challenge to special measures designed to adequately advance protected classes, and specifies that government agencies need not prove racial discrimination before undertaking special measures.

AB 1400 (Wolk): Universal design.

Requires builders to provide a list to potential home buyers of universal design features that are available at extra cost.

AB 1536 (Goldberg): DFEH procedures.

Clarifies the DFEH does not need the Attorney General's consent to file an injunction action against housing discrimination; Provides that when a complainant is represented by private counsel, the private counsel shall serve the complaint, to be done within 60 days (current law is 45 days); Deletes certain notice requirements from DFEH to complainants.

SB 262 (Kuehl): Access enforcement.

Adds civil penalties to the remedies public prosecutors may seek in enforcing building access laws; Adds county counsels to the public attorneys authorized to enforce those laws.

SB 1025 (Escutia): Multistory townhome access.

Requires at least 10 percent of the units in a multifamily development in which individual units contain more than one

floor have an accessible entry and a bathroom on the main living level. Applies only to new construction after 2005 with at least 4 condominium units or 3 apartment units.

Not Enacted:

SB 522 (Soto): Residential hotel inspections.

Would establish a licensing and inspection program for SRO hotels having more than 25 percent disabled tenants. Senate Health hearing canceled at the request of the author; bill may be moved next year.

Finance Bills:

Signed:

AB 304 (Mullin): CalFHA.

Increases down payment assistance provided in the Homeownership In Revitalization Areas Program (HIRAP) created by Proposition 46 (Housing Bond) from three percent to six percent of the home sales price; allows CalHFA to provide mortgage assistance to homebuyers making more than 120% of the area median income if necessary, to meet requirements for participation in an affordable housing program offered by Fannie Mae and Freddie Mac; makes cleanup amendments to various sections relating to CalHFA's mortgage insurance program.

Not Enacted:

ACA 14 (Steinberg): Infrastructure and housing tax.

Would allow 55 percent of voters in a locality to authorize a special tax for infrastructure (existing law requires a 2/3 majority); would require at least 25 percent of the proceeds to be used for construction, acquisition, and rehabilitation of very low, low, and moderate income housing, including rental housing and homeless shelters. Placed on Assembly inactive file.

SB 360 (Romero): Prevailing wages.

Extends the exemption deadline for certain residential and low income housing projects from the provisions of prevailing wage law. Bill was not moved in the last days of the session.

Homeless Bills:

Enacted:

AB 1475 (Steinberg): Homeless comprehensive services.

Requires HCD to give priority in awarding Prop. 46 funds for supportive housing projects to those projects that include supportive services and meet specific criteria.

Land Use Bills:

Enacted:

AB 305 (Mullin): Density bonuses: child care facilities.

Requires an additional density bonus, concession, or incentive when an affordable housing development incorporates child care facilities.

AB 1309 (Goldberg): School site replacement housing.

Authorizes a locality to acquire real property for new school site replacement housing, if the acquisition of a school site by a school district results in a loss of housing, and if the local governing agency has determined that an extreme shortage of affordable housing exists in the vicinity of the school site; Requires the adoption of a replacement housing plan.

SB 619 (Ducheny): CRLA Foundation omnibus land use bill.

Prohibits discrimination against or denial of a project because the development consists of a multifamily residential project or because of the method of financing or other specified assistance; Defines "housing development project" and provides that a multifamily residential housing project is a permitted use not subject to conditional approval if it meets specified criteria; Specifies that attorneys fees may be awarded to a prevailing nonprofit housing corporation that is the real party in interest and the housing permit applicant, as specified; Prescribes additional criteria for awarding CalHome loans and grants, including assistance for mutual housing development and limited equity cooperative housing developments and would authorize the department to implement these changes for 24 months using guidelines not subject to the Administrative Procedure Act; Requires the California Coastal Commission to encourage housing opportunities for persons of low and moderate income, and prohibit the commission or permit issuing agency from reducing the density of a residential development unless it makes a prescribed finding.

Not Enacted:

AB 218 (Simitian): Housing unit definition.

Would require the Department of Finance to use US Census Bureau definition of a housing unit when there is a dispute between the Department of Housing and a locality involving fair share requirements. The Census Bureau's definition includes senior congregate housing as housing units. AB 218 was vetoed by the Governor.

AB 980 (Salinas): Housing element self-certification.

Would authorize localities to self-certify their housing elements; Would specifically make them eligible for housing programs requiring housing element compliance. Amended in September to incorporate specific percentage requirements; 2-year bill.

AB 1160 (Steinberg): Second units.

Would limit and clarify the development standards that local governments may apply to second units; cleans up last year's density bonus/second unit bill; requires a mandatory parking reduction for density bonus projects upon request of an applicant; provides a density bonus for the residential component of joint use projects in which housing is located on school sites; and clarifies the definition of "by right" in existing law. Sponsored by CRLAF and others; held in Assembly Housing after opposition from Cities.

AB 1192 (Dutra): Downzoning.

Would clarify provisions in AB 2292 of 2002 that imposed requirements on localities when downzoning occurs, including a prohibition on requiring the developer to pay for the actions needed to ensure that there is no net loss in residential unit capacity. Bill was to take effect immediately and thus required a 2/3 vote (and therefore Republican votes). Although

it had bi-partisan support (it passed the Senate 39-0), it was caught up in end-of-the-session conflicts in the Assembly between the parties and was not brought up for a vote.

AB 1426 (Steinberg): Sacramento regional housing.

Creates a pilot affordable housing production standard program in the greater Sacramento region; Requires every city and county within the region to require or otherwise cause at least ten percent of the aggregate amount of new residential units to be affordable to, and occupied by, very low or low income households, as specified; Requires jurisdictions that have fail to meet specified percentages of the standard to do all of the following: (1) identify sites to meet their low and very low income housing needs on land zoned for multifamily housing with densities of at least 20 and 30 units per acre, (2) require only one application for all affordable housing development approvals and adopt and apply an expedited permit approval process for those applications, (3) increase density bonuses for affordable housing developments to 40 percent and require the granting of two incentives, as opposed to one, (4) increase the low and moderate income housing set-aside for the jurisdiction's redevelopment agency to 35 percent for five years, (5) receive negative points in the allocation process for state CDBG funds for two years, and (6) ensure that building permits for low or very low income households are issued in 2011-2013 in the amount of units which the locality fell short of meeting the performance standard. The bill was not brought up for a vote in the Senate in the closing days of the session.

SB 178 (Cedillo): Inclusionary housing.

See listing under tenancies.

SB 744 (Dunn and Ducheny): Housing appeals board.

Would create a state housing appeals board, similar to measures in place in Massachusetts and Connecticut. Placed on Senate Floor inactive file.

Redevelopment Bills:

Enacted:

AB 1731 (HCD Committee): SB 211 amendments.

Clean-up of SB 211, sponsored by the Department of Housing: Prescribes additional criteria for the amendment of redevelopment plans to extend time limits to fulfill affordable housing obligations, and provides that the time limits on loans, advances, and indebtedness do not prevent the establishment of more debt to fulfill affordable housing obligations.

SB 109 (Torlakson): Audit violations.

Requires the Controller to send back-up documents and affidavits to the Attorney General with the list (required by current law) of redevelopment agencies with major violations of law; Requires a redevelopment agency to respond to any action filed by the Attorney General within 15 days of service; Requires an agency to forfeit a prescribed amount to the state if the court determines after a subsequent hearing that the agency has not corrected a major audit violation; Includes additional matters within the definition of a major audit violation.

SB 965 (Aanestad): Redding veterans home.

Authorizes the Redding redevelopment agency, the County of Shasta redevelopment agency, and any other city within the

County of Shasta to borrow funds deposited in an agency's Low and Moderate Income Housing Fund to provide financial assistance for the acquisition of property for a veterans home in Redding. As introduced, the bill would have allowed development of any veterans home as a legal use of Low and Moderate Income Housing Fund money, including a home such as Redding, which will be a skilled nursing facility. Housing advocates agreed to a narrow bill allowing the loan of funds, with interest, specifically for the Redding home.

SB 1045 (Budget Committee): Redevelopment funds transfer.

Requires redevelopment agencies statewide to transfer a total of \$135 million of Fiscal Year 2003-04 revenue to county Educational Revenue Augmentation Funds, but after the 20% transfers to Low and Moderate Income Housing funds are made. AB 1755, which is not enacted, would have required a transfer of \$250 million.

Not Enacted:

AB 1358 (Simitian): Redevelopment obligation transfers.

Would allow a city with a population of less than 100,000 in San Mateo, Santa Clara, and Santa Cruz counties redevelopment agency to expend redevelopment housing funds within 5 miles of any project area. Bill contains none of the usual restrictions imposed in the past with pooling arrangements. Senate Housing hearing was canceled by the author after opposition.

AB 1755 (Budget Committee): Redevelopment funds transfer.

Requires redevelopment agencies statewide to transfer a total of \$250 million of Fiscal Year 2003-04 revenue to county Educational Revenue Augmentation Funds, but after the 20% transfers to Low and Moderate Income Housing funds are made. SB 1045, which was enacted instead of this bill, requires a transfer of \$135 million.