

4622

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. ONORATO, DILAN, HASSELL-THOMPSON, C. JOHNSON, KLEIN, PARKER, SAMPSON, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the real property tax law, in relation to rent increases for major capital improvements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subparagraph (g) of paragraph 1 of subdivision g of section
2 26-405 of the administrative code of the city of New York, as amended by
3 chapter 749 of the laws of 1990, is amended to read as follows:
4 (g) There has been since July first, nineteen hundred seventy, a
5 major capital improvement [required for the operation, preservation or
6 maintenance of the structure] PROVIDED THAT THE COMMISSIONER FINDS THAT
7 SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER THE INTERNAL REVENUE CODE
8 AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE CONTINUED, IMPROVED OR
9 PROLONGED OPERATION OR PRESERVATION OF THE STRUCTURE. THE DIVISION OF
10 HOUSING AND COMMUNITY RENEWAL SHALL PROMULGATE A COST SCHEDULE REFLECT-
11 ING THE REASONABLE INDUSTRY-WIDE ACTUAL COST OF SUCH IMPROVEMENTS WHICH
12 SHALL BE UPDATED PERIODICALLY TO ACCURATELY REFLECT SUCH COST. ONE-HALF
13 OF THE COST OF THE IMPROVEMENTS SHALL BE AMORTIZED OVER A PERIOD OF TIME
14 OF SUCH DURATION AS WILL ENABLE SUCH AMOUNT TO BE FULLY RECOUPED AS A
15 TEMPORARY SURCHARGE TO LEGAL REGULATED RENT BASED UPON THE REASONABLE
16 INDUSTRY-WIDE ACTUAL COST CITED IN THE COST SCHEDULE PROVIDED FOR HEREIN
17 IF SO CITED, OR THE ACTUAL CASH PURCHASE PRICE WHICHEVER IS LESS. THE
18 BALANCE OF THE COST OF SUCH IMPROVEMENTS SHALL BE A PERMANENT INCREASE
19 IN THE LEGAL RENT. THE COLLECTION OF ANY SUCH SURCHARGE OR SURCHARGES
20 FOR ANY APARTMENT PURSUANT TO THIS PARAGRAPH SHALL NOT EXCEED SIX
21 PERCENT FROM THE EFFECTIVE DATE OF THE ORDER GRANTING THE SURCHARGE OVER
22 THE RENT SET FORTH IN THE SCHEDULE OF GROSS RENTS, WITH COLLECTABILITY
23 OF ANY DOLLAR EXCESS ABOVE SAID SUM TO BE SPREAD FORWARD IN SIMILAR
24 INCREMENTS AND ADDED TO THE STABILIZED RENT AS ESTABLISHED OR SET IN

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 FUTURE YEARS. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL MAKE A
2 DETERMINATION UPON APPLICATION FOR SURCHARGE BY OWNERS WITHIN ONE
3 HUNDRED TWENTY DAYS OF THE INITIAL FILING OF SUCH APPLICATION WITH ANY
4 SURCHARGE TO RENTS TO BEGIN ONLY AFTER FINAL DETERMINATION HAS BEEN MADE
5 AND AFTER ALL IMMEDIATELY HAZARDOUS VIOLATIONS, AS DETERMINED PURSUANT
6 TO REGULATIONS OF THE AGENCY ADMINISTERING AND ENFORCING A BUILDING CODE
7 IN THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED, HAVE BEEN CURED.

8 UPON APPROVAL OF THE APPLICATION PROVIDED FOR HEREIN, THE DIVISION OF
9 HOUSING AND COMMUNITY RENEWAL SHALL PROVIDE THE TENANTS IN OCCUPANCY IN
10 SUCH BUILDINGS WITH NOTICE THEREOF. An adjustment under this subpara-
11 graph (g) shall be in an amount sufficient to amortize the cost of the
12 improvements pursuant to this subparagraph (g) over a seven-year period;
13 or

14 S 2. Paragraph 6 of subdivision c of section 26-511 of the administra-
15 tive code of the city of New York, as amended by chapter 116 of the laws
16 of 1997, is amended to read as follows:

17 (6) provides criteria whereby the commissioner may act upon applica-
18 tions by owners for increases in excess of the level of fair rent
19 increase established under this law provided, however, that such crite-
20 ria shall provide [(a)] as to hardship applications, for a finding that
21 the level of fair rent increase is not sufficient to enable the owner to
22 maintain approximately the same average annual net income (which shall
23 be computed without regard to debt service, financing costs or manage-
24 ment fees) for the three year period ending on or within six months of
25 the date of an application pursuant to such criteria as compared with
26 annual net income, which prevailed on the average over the period nine-
27 teen hundred sixty-eight through nineteen hundred seventy, or for the
28 first three years of operation if the building was completed since nine-
29 teen hundred sixty-eight or for the first three fiscal years after a
30 transfer of title to a new owner provided the new owner can establish to
31 the satisfaction of the commissioner that he or she acquired title to
32 the building as a result of a bona fide sale of the entire building and
33 that the new owner is unable to obtain requisite records for the fiscal
34 years nineteen hundred sixty-eight through nineteen hundred seventy
35 despite diligent efforts to obtain same from predecessors in title and
36 further provided that the new owner can provide financial data covering
37 a minimum of six years under his or her continuous and uninterrupted
38 operation of the building to meet the three year to three year compar-
39 ative test periods herein provided[; and (b) as to completed building-
40 wide major capital improvements, for a finding that such improvements
41 are deemed depreciable under the Internal Revenue Code and that the cost
42 is to be amortized over a seven-year period, based upon cash purchase
43 price exclusive of interest or service charges]. Notwithstanding
44 anything to the contrary contained herein, no hardship increase granted
45 pursuant to this paragraph shall, when added to the annual gross rents,
46 as determined by the commissioner, exceed the sum of, (i) the annual
47 operating expenses, (ii) an allowance for management services as deter-
48 mined by the commissioner, (iii) actual annual mortgage debt service
49 (interest and amortization) on its indebtedness to a lending institu-
50 tion, an insurance company, a retirement fund or welfare fund which is
51 operated under the supervision of the banking or insurance laws of the
52 state of New York or the United States, and (iv) eight and one-half
53 percent of that portion of the fair market value of the property which
54 exceeds the unpaid principal amount of the mortgage indebtedness
55 referred to in subparagraph (iii) of this paragraph. Fair market value
56 for the purposes of this paragraph shall be six times the annual gross

1 rent. The collection of any increase in the stabilized rent for any
2 apartment pursuant to this paragraph shall not exceed six percent in any
3 year from the effective date of the order granting the increase over the
4 rent set forth in the schedule of gross rents, with collectability of
5 any dollar excess above said sum to be spread forward in similar incre-
6 ments and added to the stabilized rent as established or set in future
7 years;

8 S 3. Subdivision c of section 26-511 of the administrative code of the
9 city of New York is amended by adding a new paragraph 6-b to read as
10 follows:

11 (6-B) PROVIDES CRITERIA WHEREBY THE COMMISSIONER MAY ACT UPON APPLICA-
12 TION BY OWNERS FOR INCREASES IN EXCESS OF THE LEVEL OF FAIR RENT
13 INCREASE ESTABLISHED UNDER THIS LAW PROVIDED, HOWEVER, THAT SUCH CRITE-
14 RIA SHALL PROVIDE AS TO COMPLETED BUILDING-WIDE MAJOR CAPITAL IMPROVE-
15 MENTS, FOR A FINDING THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER
16 THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE
17 CONTINUED, IMPROVED OR PROLONGED OPERATION, PRESERVATION OR MAINTENANCE
18 OF THE STRUCTURE. THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL
19 PROMULGATE A COST SCHEDULE REFLECTING THE REASONABLE INDUSTRY-WIDE ACTU-
20 AL COST OF SUCH IMPROVEMENTS WHICH SHALL BE UPDATED PERIODICALLY TO
21 ACCURATELY REFLECT SUCH COST. ONE-HALF OF THE COST OF THE IMPROVEMENTS
22 SHALL BE AMORTIZED OVER A PERIOD OF TIME OF SUCH DURATION AS WILL ENABLE
23 SUCH AMOUNT TO BE FULLY RECOUPED AS A RENTAL SURCHARGE BASED UPON THE
24 REASONABLE INDUSTRY-WIDE ACTUAL COST CITED IN THE COST SCHEDULE PROVIDED
25 FOR HEREIN IF SO CITED, OR THE ACTUAL CASH PURCHASE PRICE WHICHEVER IS
26 LESS. THE BALANCE OF THE COST OF SUCH IMPROVEMENTS SHALL BE A PERMANENT
27 INCREASE IN THE LEGAL RENT. THE COLLECTION OF ANY INCREASE OR INCREASES
28 IN THE STABILIZED RENT FOR ANY APARTMENT PURSUANT TO THIS PARAGRAPH
29 SHALL NOT EXCEED SIX PERCENT IN ANY YEAR FROM THE EFFECTIVE DATE OF THE
30 ORDER GRANTING THE INCREASE OVER THE RENT SET FORTH IN THE SCHEDULE OF
31 GROSS RENTS, WITH COLLECTABILITY OF ANY DOLLAR EXCESS ABOVE SAID SUM TO
32 BE SPREAD FORWARD IN SIMILAR INCREMENTS AND ADDED TO THE STABILIZED RENT
33 AS ESTABLISHED OR SET IN FUTURE YEARS. THE DIVISION OF HOUSING AND
34 COMMUNITY RENEWAL SHALL MAKE A DETERMINATION UPON APPLICATION FOR
35 INCREASE BY OWNERS WITHIN ONE HUNDRED TWENTY DAYS OF THE INITIAL FILING
36 OF SUCH APPLICATION WITH ANY INCREASE IN RENTS TO BEGIN ONLY AFTER FINAL
37 DETERMINATION HAS BEEN MADE AND AFTER ALL IMMEDIATELY HAZARDOUS
38 VIOLATIONS, AS DETERMINED PURSUANT TO REGULATIONS OF THE DEPARTMENT OF
39 HOUSING PRESERVATION AND DEVELOPMENT, HAVE BEEN CURED.

40 UPON APPROVAL OF THE APPLICATION PROVIDED FOR HEREIN, THE DIVISION OF
41 HOUSING AND COMMUNITY RENEWAL SHALL PROVIDE THE TENANTS IN OCCUPANCY IN
42 SUCH BUILDINGS WITH NOTICE THEREOF.

43 S 4. Paragraph 3 of subdivision d of section 6 of section 4 of chap-
44 ter 576 of the laws of 1974, constituting the emergency tenant
45 protection act of nineteen seventy-four, as amended by chapter 749 of
46 the laws of 1990, is amended to read as follows:

47 (3) there has been since January [first, nineteen hundred seventy-
48 four] 1, 1974 a major capital improvement [required for the operation,
49 preservation or maintenance of the structure] PROVIDED THAT THE COMMIS-
50 SIONER FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER THE
51 INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE CONTIN-
52 UED, IMPROVED OR PROLONGED OPERATION OR PRESERVATION OF THE STRUCTURE.
53 THE DIVISION OF HOUSING AND COMMUNITY RENEWAL SHALL PROMULGATE A COST
54 SCHEDULE REFLECTING THE REASONABLE INDUSTRY-WIDE ACTUAL COST OF SUCH
55 IMPROVEMENTS WHICH SHALL BE UPDATED PERIODICALLY TO ACCURATELY REFLECT
56 SUCH COST. ONE-HALF OF THE COST OF THE IMPROVEMENTS SHALL BE AMORTIZED

1 OVER A PERIOD OF TIME OF SUCH DURATION AS WILL ENABLE SUCH AMOUNT TO BE
2 FULLY RECOUPED AS A TEMPORARY SURCHARGE TO LEGAL REGULATED RENT BASED
3 UPON THE REASONABLE INDUSTRY-WIDE ACTUAL COST CITED IN THE COST SCHEDULE
4 PROVIDED FOR HEREIN IF SO CITED, OR THE ACTUAL CASH PURCHASE PRICE
5 WHICHEVER IS LESS. THE BALANCE OF THE COST OF SUCH IMPROVEMENTS SHALL BE
6 A PERMANENT INCREASE IN THE LEGAL RENT. THE COLLECTION OF ANY SUCH
7 SURCHARGE OR SURCHARGES FOR ANY APARTMENT PURSUANT TO THIS PARAGRAPH
8 SHALL NOT EXCEED SIX PERCENT FROM THE EFFECTIVE DATE OF THE ORDER GRANT-
9 ING THE SURCHARGE OVER THE RENT SET FORTH IN THE SCHEDULE OF GROSS
10 RENTS, WITH COLLECTABILITY OF ANY DOLLAR EXCESS ABOVE SAID SUM TO BE
11 SPREAD FORWARD IN SIMILAR INCREMENTS AND ADDED TO THE STABILIZED RENT AS
12 ESTABLISHED OR SET IN FUTURE YEARS. THE DIVISION OF HOUSING AND COMMUNI-
13 TY RENEWAL SHALL MAKE A DETERMINATION UPON APPLICATION FOR SURCHARGE BY
14 OWNERS WITHIN ONE HUNDRED TWENTY DAYS OF THE INITIAL FILING OF SUCH
15 APPLICATION WITH ANY SURCHARGE TO RENTS TO BEGIN ONLY AFTER FINAL DETER-
16 MINATION HAS BEEN MADE AND AFTER ALL IMMEDIATELY HAZARDOUS VIOLATIONS,
17 AS DETERMINED PURSUANT TO REGULATIONS OF THE AGENCY ADMINISTERING AND
18 ENFORCING A BUILDING CODE IN THE JURISDICTION IN WHICH THE PROPERTY IS
19 LOCATED, HAVE BEEN CURED.

20 UPON APPROVAL OF THE APPLICATION PROVIDED FOR HEREIN, THE DIVISION OF
21 HOUSING AND COMMUNITY RENEWAL SHALL PROVIDE THE TENANTS IN OCCUPANCY IN
22 SUCH BUILDINGS WITH NOTICE THEREOF. An adjustment under this paragraph
23 shall be in an amount sufficient to amortize the cost of the improve-
24 ments pursuant to this paragraph over a seven-year period, or

25 S 5. Paragraph e of subdivision 1 of section 467-b of the real proper-
26 ty tax law, as amended by chapter 555 of the laws of 1977, is amended to
27 read as follows:

28 e. "Increase in maximum rent or legal regulated rent" means any
29 increase in the maximum rent or the legal regulated rent for the dwell-
30 ing unit in question pursuant to the applicable rent control law or to
31 the emergency tenant protection act of nineteen seventy-four, respec-
32 tively, or such classes of increase thereunder as may be specified in a
33 local law, ordinance or resolution enacted pursuant to this section,
34 INCLUDING ANY INCREASE ATTRIBUTABLE TO A MAJOR CAPITAL IMPROVEMENT, over
35 such base period rent as shall be provided therein or an exemption from
36 the maximum rent or legal regulated rent as specified in paragraph c or
37 d of subdivision three of this section;

38 S 6. This act shall take effect immediately; provided that the amend-
39 ment to section 26-405 of the city rent and rehabilitation law made by
40 section one of this act shall remain in full force and effect only so
41 long as the public emergency requiring the regulation and control of
42 residential rents and evictions continues, as provided in subdivision 3
43 of section 1 of the local emergency housing rent control act, and
44 provided further that the amendment to section 26-511 of the rent
45 stabilization law of nineteen hundred sixty-nine made by sections two
46 and three of this act shall expire on the same date as such law expires
47 and shall not affect the expiration of such law as provided under
48 section 26-520 of such law, and provided that the amendment to section 6
49 of the emergency tenant protection act of nineteen seventy-four made by
50 section four of this act shall expire on the same date as such act
51 expires and shall not affect the expiration of such act as provided in
52 section 17 of chapter 576 of the laws of 1974, as amended, and provided
53 further that the amendment to section 467-b of the real property tax law
54 made by section five of this act shall not affect the expiration of such
55 section and shall be deemed to expire therewith.