

745--A

2009-2010 Regular Sessions

I N S E N A T E

January 15, 2009

Introduced by Sens. KRUEGER, DUANE, PERKINS, SCHNEIDERMAN, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, the emergency tenant protection act of nineteen seventy-four and the emergency rent control law, in relation to extending the length of time over which major capital improvement expenses may be recovered

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) (I) COLLECTION OF SURCHARGES TO THE MAXIMUM RENT AUTHORIZED PURSU-
5 ANT TO ITEM (II) OF THIS SUBPARAGRAPH SHALL CEASE WHEN THE OWNER HAS
6 RECOVERED THE COST OF THE MAJOR CAPITAL IMPROVEMENT;
7 (II) There has been since July first, nineteen hundred seventy, a
8 major capital improvement [required for the operation, preservation or
9 maintenance of the structure. An adjustment under this subparagraph (g)
10 shall be in an amount sufficient to amortize the cost of the improve-
11 ments pursuant to this subparagraph (g) over a seven-year period];
12 PROVIDED THAT THE COMMISSIONER FINDS THAT SUCH IMPROVEMENTS ARE DEEMED
13 DEPRECIABLE UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE
14 REQUIRED FOR THE OPERATION, PRESERVATION OR MAINTENANCE OF THE STRUC-
15 TURE. THE INCREASE PERMITTED FOR SUCH CAPITAL IMPROVEMENT SHALL BE
16 COLLECTED AS A MONTHLY SURCHARGE TO THE MAXIMUM RENT. IT SHALL BE SEPA-
17 RATELY DESIGNATED AND BILLED AS SUCH AND SHALL NOT BE COMPOUNDED BY ANY
18 OTHER ADJUSTMENT TO THE MAXIMUM RENT. THE SURCHARGE ALLOCABLE TO EACH
19 APARTMENT SHALL BE AN AMOUNT EQUAL TO THE COST OF THE IMPROVEMENT
20 DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE NUMBER OF ROOMS IN THE BUILDING,

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

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1 AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN SUCH APARTMENT; PROVIDED
2 THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT IN ANY ONE YEAR MAY NOT
3 EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE MONTHLY RENT COLLECTED BY
4 THE OWNER FOR SUCH APARTMENT AS SET FORTH IN THE SCHEDULE OF GROSS
5 RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE CARRIED FORWARD AND
6 COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT TO EXCEED AN ADDI-
7 TIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE TOTAL SURCHARGE
8 EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMENTIONED SIX PERCENT
9 LIMITATION DID NOT APPLY; or

10 S 2. Subparagraph (k) of paragraph 1 of subdivision g of section
11 26-405 of the administrative code of the city of New York, as amended by
12 chapter 749 of the laws of 1990, is amended to read as follows:

13 (k) The landlord has incurred, since January first, nineteen hundred
14 seventy, in connection with and in addition to a concurrent major capi-
15 tal improvement pursuant to subparagraph (g) of this paragraph, other
16 expenditures to improve, restore or preserve the quality of the struc-
17 ture. An adjustment under this subparagraph shall be granted only if
18 such improvements represent an expenditure equal to at least ten per
19 centum of the total operating and maintenance expenses for the preceding
20 year. An adjustment under this subparagraph shall be in addition to any
21 adjustment granted for the concurrent major capital improvement and
22 shall be [in an amount sufficient to amortize the cost of the improve-
23 ments pursuant to this subparagraph over a seven-year period] IMPLE-
24 MENTED IN THE SAME MANNER AS SUCH MAJOR CAPITAL IMPROVEMENT AS A FURTHER
25 SURCHARGE TO THE MAXIMUM RENT.

26 S 3. Paragraph 6 of subdivision c of section 26-511 of the administra-
27 tive code of the city of New York, as amended by chapter 116 of the laws
28 of 1997, is amended to read as follows:

29 (6) provides criteria whereby the commissioner may act upon applica-
30 tions by owners for increases in excess of the level of fair rent
31 increase established under this law provided, however, that such crite-
32 ria shall provide [(a)] as to hardship applications, for a finding that
33 the level of fair rent increase is not sufficient to enable the owner to
34 maintain approximately the same average annual net income (which shall
35 be computed without regard to debt service, financing costs or manage-
36 ment fees) for the three year period ending on or within six months of
37 the date of an application pursuant to such criteria as compared with
38 annual net income, which prevailed on the average over the period nine-
39 teen hundred sixty-eight through nineteen hundred seventy, or for the
40 first three years of operation if the building was completed since nine-
41 teen hundred sixty-eight or for the first three fiscal years after a
42 transfer of title to a new owner provided the new owner can establish to
43 the satisfaction of the commissioner that he or she acquired title to
44 the building as a result of a bona fide sale of the entire building and
45 that the new owner is unable to obtain requisite records for the fiscal
46 years nineteen hundred sixty-eight through nineteen hundred seventy
47 despite diligent efforts to obtain same from predecessors in title and
48 further provided that the new owner can provide financial data covering
49 a minimum of six years under his or her continuous and uninterrupted
50 operation of the building to meet the three year to three year compar-
51 ative test periods herein provided[; and (b) as to completed building-
52 wide major capital improvements, for a finding that such improvements
53 are deemed depreciable under the Internal Revenue Code and that the cost
54 is to be amortized over a seven-year period, based upon cash purchase
55 price exclusive of interest or service charges]. Notwithstanding
56 anything to the contrary contained herein, no hardship increase granted

1 pursuant to this paragraph shall, when added to the annual gross rents,
2 as determined by the commissioner, exceed the sum of, (i) the annual
3 operating expenses, (ii) an allowance for management services as deter-
4 mined by the commissioner, (iii) actual annual mortgage debt service
5 (interest and amortization) on its indebtedness to a lending institu-
6 tion, an insurance company, a retirement fund or welfare fund which is
7 operated under the supervision of the banking or insurance laws of the
8 state of New York or the United States, and (iv) eight and one-half
9 percent of that portion of the fair market value of the property which
10 exceeds the unpaid principal amount of the mortgage indebtedness
11 referred to in subparagraph (iii) of this paragraph. Fair market value
12 for the purposes of this paragraph shall be six times the annual gross
13 rent. The collection of any increase in the stabilized rent for any
14 apartment pursuant to this paragraph shall not exceed six percent in any
15 year from the effective date of the order granting the increase over the
16 rent set forth in the schedule of gross rents, with collectability of
17 any dollar excess above said sum to be spread forward in similar incre-
18 ments and added to the stabilized rent as established or set in future
19 years;

20 S 4. Subdivision c of section 26-511 of the administrative code of the
21 city of New York is amended by adding two new paragraphs 6-b and 6-c to
22 read as follows:

23 (6-B) PROVIDES CRITERIA WHEREBY THE COMMISSIONER MAY ACT UPON APPLICA-
24 TION BY OWNERS FOR INCREASES IN EXCESS OF THE LEVEL OF FAIR RENT
25 INCREASE ESTABLISHED UNDER THIS LAW PROVIDED, HOWEVER, THAT SUCH CRITE-
26 RIA SHALL PROVIDE AS TO COMPLETED BUILDING-WIDE MAJOR CAPITAL IMPROVE-
27 MENTS, FOR A FINDING THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER
28 THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE
29 OPERATION, PRESERVATION OR MAINTENANCE OF THE STRUCTURE. THE INCREASE
30 PERMITTED FOR SUCH CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY
31 SURCHARGE TO THE LEGAL REGULATED RENT. IT SHALL BE SEPARATELY DESIGNATED
32 AND BILLED AS SUCH AND SHALL NOT BE COMPOUNDED BY ANY ANNUAL ADJUSTMENT
33 OF THE LEVEL OF FAIR RENT PROVIDED FOR UNDER SUBDIVISION B OF SECTION
34 26-510 OF THIS LAW. THE SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE
35 AN AMOUNT EQUAL TO THE COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR,
36 DIVIDED BY THE NUMBER OF ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY
37 THE NUMBER OF ROOMS IN SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLO-
38 CABLE TO ANY APARTMENT, IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL
39 TO SIX PERCENT OF THE MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH
40 APARTMENT AS SET FORTH IN THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE
41 SAID SIX PERCENT SHALL BE CARRIED FORWARD AND COLLECTED IN FUTURE YEARS
42 AS A FURTHER SURCHARGE NOT TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY
43 ONE YEAR PERIOD UNTIL THE TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD
44 HAVE BEEN IF THE AFOREMENTIONED SIX PERCENT LIMITATION DID NOT APPLY.

45 (6-C) COLLECTION OF SURCHARGES IN EXCESS OF THE LEVEL OF FAIR RENT
46 AUTHORIZED PURSUANT TO PARAGRAPH SIX-B OF THIS SUBDIVISION SHALL CEASE
47 WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL IMPROVEMENT.

48 S 5. Paragraph 3 of subdivision d of section 6 of section 4 of chapter
49 576 of the laws of 1974, constituting the emergency tenant protection
50 act of nineteen seventy-four, as amended by chapter 749 of the laws of
51 1990, is amended to read as follows:

52 (3) (I) COLLECTION OF SURCHARGES IN ADDITION TO THE LEGAL REGULATED
53 RENT AUTHORIZED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL
54 CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL
55 IMPROVEMENT;

1 (II) there has been since January first, nineteen hundred seventy-four
2 a major capital improvement [required for the operation, preservation or
3 maintenance of the structure. An adjustment under this paragraph shall
4 be in an amount sufficient to amortize the cost of the improvements
5 pursuant to this paragraph over a seven-year period]; PROVIDED THAT THE
6 COMMISSIONER FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIABLE UNDER
7 THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED FOR THE
8 OPERATION, PRESERVATION OR MAINTENANCE OF THE STRUCTURE. THE INCREASE
9 PERMITTED FOR SUCH CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A MONTHLY
10 SURCHARGE TO THE LEGAL REGULATED RENT. IT SHALL BE SEPARATELY DESIGNATED
11 AND BILLED AS SUCH AND SHALL NOT BE COMPOUNDED BY ANY ANNUAL RENT
12 ADJUSTMENT AUTHORIZED BY THE RENT GUIDELINES BOARD UNDER THIS ACT. THE
13 SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE AN AMOUNT EQUAL TO THE
14 COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR, DIVIDED BY THE NUMBER OF
15 ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY THE NUMBER OF ROOMS IN
16 SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLOCABLE TO ANY APARTMENT
17 IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO SIX PERCENT OF THE
18 MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APARTMENT AS SET FORTH IN
19 THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID SIX PERCENT SHALL BE
20 CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A FURTHER SURCHARGE NOT
21 TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE YEAR PERIOD UNTIL THE
22 TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE BEEN IF THE AFOREMEN-
23 TIONED SIX PERCENT LIMITATION DID NOT APPLY, or

24 S 6. The second undesignated paragraph of paragraph (a) of subdivision
25 4 of section 4 of chapter 274 of the laws of 1946, constituting the
26 emergency rent control law, as amended by chapter 21 of the laws of
27 1962, clause 5 as amended by chapter 253 of the laws of 1993, is amended
28 to read as follows:

29 No application for adjustment of maximum rent based upon a sales price
30 valuation shall be filed by the landlord under this subparagraph prior
31 to six months from the date of such sale of the property. In addition,
32 no adjustment ordered by the commission based upon such sales price
33 valuation shall be effective prior to one year from the date of such
34 sale. Where, however, the assessed valuation of the land exceeds four
35 times the assessed valuation of the buildings thereon, the commission
36 may determine a valuation of the property equal to five times the equal-
37 ized assessed valuation of the buildings, for the purposes of this
38 subparagraph. The commission may make a determination that the valu-
39 ation of the property is an amount different from such equalized
40 assessed valuation where there is a request for a reduction in such
41 assessed valuation currently pending; or where there has been a
42 reduction in the assessed valuation for the year next preceding the
43 effective date of the current assessed valuation in effect at the time
44 of the filing of the application. Net annual return shall be the amount
45 by which the earned income exceeds the operating expenses of the proper-
46 ty, excluding mortgage interest and amortization, and excluding allow-
47 ances for obsolescence and reserves, but including an allowance for
48 depreciation of two per centum of the value of the buildings exclusive
49 of the land, or the amount shown for depreciation of the buildings in
50 the latest required federal income tax return, whichever is lower;
51 provided, however, that (1) no allowance for depreciation of the build-
52 ings shall be included where the buildings have been fully depreciated
53 for federal income tax purposes or on the books of the owner; or (2) the
54 landlord who owns no more than four rental units within the state has
55 not been fully compensated by increases in rental income sufficient to
56 offset unavoidable increases in property taxes, fuel, utilities, insur-

1 ance and repairs and maintenance, excluding mortgage interest and amor-
2 tization, and excluding allowances for depreciation, obsolescence and
3 reserves, which have occurred since the federal date determining the
4 maximum rent or the date the property was acquired by the present owner,
5 whichever is later; or (3) the landlord operates a hotel or rooming
6 house or owns a cooperative apartment and has not been fully compensated
7 by increases in rental income from the controlled housing accommodations
8 sufficient to offset unavoidable increases in property taxes and other
9 costs as are allocable to such controlled housing accommodations,
10 including costs of operation of such hotel or rooming house, but exclud-
11 ing mortgage interest and amortization, and excluding allowances for
12 depreciation, obsolescence and reserves, which have occurred since the
13 federal date determining the maximum rent or the date the landlord
14 commenced the operation of the property, whichever is later; or (4) the
15 landlord and tenant voluntarily enter into a valid written lease in good
16 faith with respect to any housing accommodation, which lease provides
17 for an increase in the maximum rent not in excess of fifteen per centum
18 and for a term of not less than two years, except that where such lease
19 provides for an increase in excess of fifteen per centum, the increase
20 shall be automatically reduced to fifteen per centum; or (5) the land-
21 lord and tenant by mutual voluntary written agreement agree to a
22 substantial increase or decrease in dwelling space or a change in the
23 services, furniture, furnishings or equipment provided in the housing
24 accommodations; provided that an owner shall be entitled to a rent
25 increase where there has been a substantial modification or increase of
26 dwelling space or an increase in the services, or installation of new
27 equipment or improvements or new furniture or furnishings provided in or
28 to a tenant's housing accommodation. The permanent increase in the maxi-
29 mum rent for the affected housing accommodation shall be one-fortieth of
30 the total cost incurred by the landlord in providing such modification
31 or increase in dwelling space, services, furniture, furnishings or
32 equipment, including the cost of installation, but excluding finance
33 charges provided further that an owner who is entitled to a rent
34 increase pursuant to this clause shall not be entitled to a further rent
35 increase based upon the installation of similar equipment, or new furni-
36 ture or furnishings within the useful life of such new equipment, or new
37 furniture or furnishings. The owner shall give written notice to the
38 commission of any such adjustment pursuant to this clause; or (6) there
39 has been, since March first, nineteen hundred fifty, an increase in the
40 rental value of the housing accommodations as a result of a substantial
41 rehabilitation of the building or housing accommodation therein which
42 materially adds to the value of the property or appreciably prolongs its
43 life, excluding ordinary repairs, maintenance and replacements; or (7)
44 (I) COLLECTION OF SURCHARGES TO THE MAXIMUM RENT AUTHORIZED PURSUANT TO
45 ITEM (II) OF THIS CLAUSE SHALL CEASE WHEN THE OWNER HAS RECOVERED THE
46 COST OF THE MAJOR CAPITAL IMPROVEMENT; (II) there has been since March
47 first, nineteen hundred fifty, a major capital improvement [required for
48 the operation, preservation or maintenance of the structure]; PROVIDED
49 THAT THE COMMISSIONER FINDS THAT SUCH IMPROVEMENTS ARE DEEMED DEPRECIA-
50 BLE UNDER THE INTERNAL REVENUE CODE AND SUCH IMPROVEMENTS ARE REQUIRED
51 FOR THE OPERATION, PRESERVATION OR MAINTENANCE OF THE STRUCTURE. THE
52 INCREASE PERMITTED FOR SUCH CAPITAL IMPROVEMENT SHALL BE COLLECTED AS A
53 MONTHLY SURCHARGE TO THE MAXIMUM RENT. IT SHALL BE SEPARATELY DESIGNATED
54 AND BILLED AS SUCH AND SHALL NOT BE COMPOUNDED BY ANY OTHER ADJUSTMENT
55 TO THE MAXIMUM RENT. THE SURCHARGE ALLOCABLE TO EACH APARTMENT SHALL BE
56 AN AMOUNT EQUAL TO THE COST OF THE IMPROVEMENT DIVIDED BY EIGHTY-FOUR,

1 DIVIDED BY THE NUMBER OF ROOMS IN THE BUILDING, AND THEN MULTIPLIED BY
2 THE NUMBER OF ROOMS IN SUCH APARTMENT; PROVIDED THAT THE SURCHARGE ALLO-
3 CABLE TO ANY APARTMENT IN ANY ONE YEAR MAY NOT EXCEED AN AMOUNT EQUAL TO
4 SIX PERCENT OF THE MONTHLY RENT COLLECTED BY THE OWNER FOR SUCH APART-
5 MENT AS SET FORTH IN THE SCHEDULE OF GROSS RENTS. ANY EXCESS ABOVE SAID
6 SIX PERCENT SHALL BE CARRIED FORWARD AND COLLECTED IN FUTURE YEARS AS A
7 FURTHER SURCHARGE NOT TO EXCEED AN ADDITIONAL SIX PERCENT IN ANY ONE
8 YEAR PERIOD UNTIL THE TOTAL SURCHARGE EQUALS THE AMOUNT IT WOULD HAVE
9 BEEN IF THE AFOREMENTIONED SIX PERCENT LIMITATION DID NOT APPLY; or (8)
10 there has been since March first, nineteen hundred fifty, in structures
11 containing more than four housing accommodations, other improvements
12 made with the express consent of the tenants in occupancy of at least
13 seventy-five per centum of the housing accommodations, provided, howev-
14 er, that no adjustment granted hereunder shall exceed fifteen per centum
15 unless the tenants have agreed to a higher percentage of increase, as
16 herein provided; or (9) there has been, since March first, nineteen
17 hundred fifty, a subletting without written consent from the landlord or
18 an increase in the number of adult occupants who are not members of the
19 immediate family of the tenant, and the landlord has not been compen-
20 sated therefor by adjustment of the maximum rent by lease or order of
21 the commission or pursuant to the federal act; or (10) the presence of
22 unique or peculiar circumstances materially affecting the maximum rent
23 has resulted in a maximum rent which is substantially lower than the
24 rents generally prevailing in the same area for substantially similar
25 housing accommodations.

26 S 7. This act shall take effect immediately; provided that the amend-
27 ments to section 26-405 of the city rent and rehabilitation law made by
28 sections one and two of this act shall remain in full force and effect
29 only so long as the public emergency requiring the regulation and
30 control of residential rents and evictions continues, as provided in
31 subdivision 3 of section 1 of the local emergency housing rent control
32 act; and provided further that the amendments to section 26-511 of the
33 rent stabilization law of nineteen hundred sixty-nine made by sections
34 three and four of this act shall expire on the same date as such law
35 expires and shall not affect the expiration of such law as provided
36 under section 26-520 of such law, as from time to time amended; and
37 provided further that the amendment to section 6 of the emergency tenant
38 protection act of nineteen seventy-four made by section five of this act
39 shall expire on the same date as such act expires and shall not affect
40 the expiration of such act as provided in section 17 of chapter 576 of
41 the laws of 1974, as from time to time amended; and further provided
42 that the amendment to section 4 of the emergency housing rent control
43 law made by section six of this act shall expire on the same date as
44 such law expires and shall not affect the expiration of such law as
45 provided in subdivision 2 of section 1 of chapter 274 of the laws of
46 1946.