

523--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. KRUEGER, AVELLA, DUANE, HASSELL-THOMPSON, MONTGOMERY, PERALTA, PERKINS, SERRANO, STAVISKY, STEWART-COUSINS -- 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 housing 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

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

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

12 S 2. Subparagraph (k) of paragraph 1 of subdivision g of section
13 26-405 of the administrative code of the city of New York, as amended by
14 chapter 749 of the laws of 1990, is amended to read as follows:

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

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

31 (6) provides criteria whereby the commissioner may act upon applica-
32 tions by owners for increases in excess of the level of fair rent
33 increase established under this law provided, however, that such crite-
34 ria shall provide [(a)] as to hardship applications, for a finding that
35 the level of fair rent increase is not sufficient to enable the owner to
36 maintain approximately the same average annual net income (which shall
37 be computed without regard to debt service, financing costs or manage-
38 ment fees) for the three year period ending on or within six months of
39 the date of an application pursuant to such criteria as compared with
40 annual net income, which prevailed on the average over the period nine-
41 teen hundred sixty-eight through nineteen hundred seventy, or for the
42 first three years of operation if the building was completed since nine-
43 teen hundred sixty-eight or for the first three fiscal years after a
44 transfer of title to a new owner provided the new owner can establish to
45 the satisfaction of the commissioner that he or she acquired title to
46 the building as a result of a bona fide sale of the entire building and
47 that the new owner is unable to obtain requisite records for the fiscal
48 years nineteen hundred sixty-eight through nineteen hundred seventy
49 despite diligent efforts to obtain same from predecessors in title and
50 further provided that the new owner can provide financial data covering
51 a minimum of six years under his or her continuous and uninterrupted
52 operation of the building to meet the three year to three year compar-
53 ative test periods herein provided[; and (b) as to completed building-
54 wide major capital improvements, for a finding that such improvements
55 are deemed depreciable under the Internal Revenue Code and that the cost
56 is to be amortized over a seven-year period, based upon cash purchase

1 price exclusive of interest or service charges]. Notwithstanding
2 anything to the contrary contained herein, no hardship increase granted
3 pursuant to this paragraph shall, when added to the annual gross rents,
4 as determined by the commissioner, exceed the sum of, (i) the annual
5 operating expenses, (ii) an allowance for management services as deter-
6 mined by the commissioner, (iii) actual annual mortgage debt service
7 (interest and amortization) on its indebtedness to a lending institu-
8 tion, an insurance company, a retirement fund or welfare fund which is
9 operated under the supervision of the banking or insurance laws of the
10 state of New York or the United States, and (iv) eight and one-half
11 percent of that portion of the fair market value of the property which
12 exceeds the unpaid principal amount of the mortgage indebtedness
13 referred to in subparagraph (iii) of this paragraph. Fair market value
14 for the purposes of this paragraph shall be six times the annual gross
15 rent. The collection of any increase in the stabilized rent for any
16 apartment pursuant to this paragraph shall not exceed six percent in any
17 year from the effective date of the order granting the increase over the
18 rent set forth in the schedule of gross rents, with collectability of
19 any dollar excess above said sum to be spread forward in similar incre-
20 ments and added to the stabilized rent as established or set in future
21 years;

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

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

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

50 S 5. Paragraph 3 of subdivision d of section 6 of section 4 of chapter
51 576 of the laws of 1974, constituting the emergency tenant protection
52 act of nineteen seventy-four, as amended by chapter 749 of the laws of
53 1990, is amended to read as follows:

54 (3) (I) COLLECTION OF SURCHARGES IN ADDITION TO THE LEGAL REGULATED
55 RENT AUTHORIZED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL

1 CEASE WHEN THE OWNER HAS RECOVERED THE COST OF THE MAJOR CAPITAL
2 IMPROVEMENT;

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

26 S 6. The second undesignated paragraph of paragraph (a) of subdivision
27 4 of section 4 of chapter 274 of the laws of 1946, constituting the
28 emergency housing rent control law, as amended by section 25 of part B
29 of chapter 97 of the laws of 2011, is amended to read as follows:

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

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

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

31 S 7. This act shall take effect immediately; provided that the amend-
32 ments to section 26-405 of the city rent and rehabilitation law made by
33 sections one and two of this act shall remain in full force and effect
34 only so long as the public emergency requiring the regulation and
35 control of residential rents and evictions continues, as provided in
36 subdivision 3 of section 1 of the local emergency housing rent control
37 act; and provided further that the amendments to section 26-511 of the
38 rent stabilization law of nineteen hundred sixty-nine made by sections
39 three and four of this act shall expire on the same date as such law
40 expires and shall not affect the expiration of such law as provided
41 under section 26-520 of such law, as from time to time amended; and
42 provided further that the amendment to section 6 of the emergency tenant
43 protection act of nineteen seventy-four made by section five of this act
44 shall expire on the same date as such act expires and shall not affect
45 the expiration of such act as provided in section 17 of chapter 576 of
46 the laws of 1974, as from time to time amended; and further provided
47 that the amendment to section 4 of the emergency housing rent control
48 law made by section six of this act shall expire on the same date as
49 such law expires and shall not affect the expiration of such law as
50 provided in subdivision 2 of section 1 of chapter 274 of the laws of
51 1946.