

HOUSE BILL REPORT

HB 1389

As Reported by House Committee On:

Housing
Appropriations

Title: An act relating to residential rent increases under the residential landlord-tenant act and the manufactured/mobile home landlord-tenant act.

Brief Description: Concerning residential rent increases under the residential landlord-tenant act and the manufactured/mobile home landlord-tenant act.

Sponsors: Representatives Ramel, Macri, Peterson, Duerr, Gregerson, Alvarado, Ormsby, Doglio, Riccelli, Cortes, Mena, Thai, Kloba, Bateman, Street, Taylor, Lekanoff, Simmons, Farivar, Pollet, Stonier, Berry, Reed, Bergquist, Davis, Santos, Senn, Stearns and Fosse.

Brief History:

Committee Activity:

Housing: 1/24/23, 2/9/23 [DPS];

Appropriations: 2/22/23, 2/24/23 [DP2S(w/o sub HOUS)].

Brief Summary of Second Substitute Bill

- Prohibits, with certain exemptions, a landlord from increasing the rent for a tenancy subject to the Residential Landlord-Tenant Act or the Manufactured/Mobile Home Landlord-Tenant Act during any 12-month period in an amount greater than the rate of inflation as measured by the Consumer Price Index or 3 percent, whichever is greater, up to a maximum of 7 percent above the existing rent.
- Prohibits a landlord from charging move-in fees or deposits that exceed one month's rent, or from charging a higher rent or including conditions in a rental agreement that are more burdensome depending on whether the tenancy is month-to-month or longer term.

HOUSE COMMITTEE ON HOUSING

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Peterson, Chair; Alvarado, Vice Chair; Bateman, Chopp, Entenman, Reed and Taylor.

Minority Report: Do not pass. Signed by 6 members: Representatives Leavitt, Vice Chair; Klicker, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Barkis, Hutchins and Low.

Staff: Audrey Vasek (786-7383).

Background:

Residential Landlord-Tenant Act.

The Residential Landlord-Tenant Act (RLTA) regulates the relationship between landlords and tenants, and includes provisions regarding the duties of tenants and landlords, remedies for violations of those duties, and prohibited actions.

Rent Increases.

Except for certain subsidized tenancies, a landlord is generally required to provide a minimum of 60 days' prior written notice of a rent increase to each affected tenant, and any increase in rent may not become effective prior to completion of the term of the rental agreement.

If the rental agreement is for a subsidized tenancy where the amount of rent is based on the income of the tenant or circumstances specific to the subsidized household, a landlord must provide a minimum of 30 days' prior written notice of a rent increase to each affected tenant, and an increase in rent may become effective upon completion of the term of the rental agreement or sooner upon mutual consent.

Manufactured/Mobile Home Landlord-Tenant Act.

The Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) governs the legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot within a mobile home park where the tenant has no ownership interest in the property or in the association that owns the property.

Rent Increases.

Except for certain escalation clause provisions, a rental agreement between a landlord and a tenant is generally not allowed to contain any provisions that allow the landlord to increase the rent during the term of the rental agreement if the term is less than two years, or more frequently than annually if the initial term is for two years or more.

A landlord seeking to increase the rent upon the expiration of the term of a rental agreement must notify the tenant in writing three months prior to the effective date of the rent increase.

Summary of Substitute Bill:

Rent Increase Limit.

Unless an exemption applies, a landlord is prohibited from increasing the rent for a tenancy subject to the RLTA or the MHLTA during the first 12 months after a tenancy begins; and, during any 12-month period, in an amount greater than the rate of inflation as measured by the Consumer Price Index or 3 percent, whichever is greater, up to a maximum of 7 percent above the existing rent.

"Rent increase" includes any new recurring and periodic charges added to a rental agreement that were not identified in the initial rental agreement.

The Department of Commerce (Department) must calculate and publish the maximum annual rent increase percentage (rent increase limit) allowed for each calendar year beginning on September 30, 2023, and annually on each following September 30. The "rate of inflation as measured by the Consumer Price Index" means the September-to-September 12-month percent change in the Consumer Price Index for All Urban Consumers (CPI-U), West Region, as published each September by the United States Department of Labor, Bureau of Labor Statistics.

Exemptions to the Rent Increase Limit.

A landlord may increase rent in an amount greater than the rent increase limit as authorized by certain exemptions. Exemptions are allowed for new buildings and publicly funded properties. Exemptions are also allowed in certain cases where the landlord has paid for improvements to the property, is experiencing significant hardship, or participates in the Banked Capacity Program operated by the Department.

New Buildings.

If the first certificate of occupancy for the dwelling unit was issued 12 or less years before the date of the notice of the rent increase, rent increases for the dwelling unit are not subject to the rent increase limit. This exemption does not apply to manufactured/mobile home lots.

Publicly Funded Properties.

If the tenancy is in a federally funded property owned or operated by a public housing

authority, or in a property that is funded through a state housing assistance program, rent increases during the tenancy are not subject to the rent increase limit.

Improvements to the Property.

If the landlord has paid for improvements, not including basic maintenance, to the dwelling unit, mobile home lot, or common areas for which the costs or the tenant's proportional share of the costs were greater than an amount equal to four months' rent, and the improvements were made during the 12 months immediately preceding the rent increase notice, the landlord may increase rent by up to 7 percent, or 4 percent plus the rent increase limit allowed for the calendar year, whichever is greater.

Significant Hardship.

If a landlord is experiencing significant hardship in complying with the rent increase limit for the current calendar year due to a disparity between the local costs for providing housing and the statewide costs for providing housing, the landlord may request that the Department issue a significant hardship exemption and approve an alternate rent increase limit consistent with the increased local costs for providing housing.

The Department must adopt rules to establish a process to review landlord requests for individual significant hardship exemptions. In issuing a significant hardship exemption, the Department must consider evidence of the landlord's significant hardship, the landlord's actual costs for providing housing, and the local and statewide costs for maintenance, operating expenses, and property taxes.

The Department must issue a letter to the landlord describing its findings and the reasons for its decision to grant or deny the request. The landlord must attach this letter to a rent increase notice.

Banked Capacity Program.

Under the Banked Capacity Program, if a landlord does not increase the rent in a 12-month period, the landlord may choose to bank the rent increase capacity for future years. The landlord may use this banked capacity to increase the rent above the rent increase limit by an additional 3 percent for each year that the landlord has banked capacity, up to a 10 percent annual rent increase. If a landlord uses banked capacity to increase the rent by 10 percent in one year and still has remaining banked capacity, the landlord may retain any remaining banked capacity for potential use in future years.

If a tenant is evicted, or if a tenant leaves after an eviction has been initiated, for any new rental agreement entered into within 12 months of the termination of the prior tenancy, the amount of rent that a landlord may charge a new tenant is limited to the previous tenant's rent plus any banked capacity that was accrued under the prior tenancy, unless another

exemption to the rent increase limit applies.

If a tenant voluntarily moves out, the amount of rent that a landlord may charge a new tenant is not limited by the rent increase limit or any banked capacity, and the landlord may reset the rent to market-rate. However, if the landlord increases the rent for the new tenant beyond the previous tenant's rent, any banked capacity is lost. If the landlord chooses not to increase the rent for the new tenant, the landlord may retain any banked capacity that accrued under the prior tenancy.

If a new owner buys a property and takes over a lease, the new owner may not increase rent for existing tenants beyond the amount that the previous landlord would have been allowed to increase rent, unless another exemption to the rent increase limit applies. The former landlord's banked capacity may be transferred as part of a property sale.

A landlord who participates in the Banked Capacity Program must provide an annual notice to current and prospective tenants of the total banked capacity and possible future rent increases. A landlord forfeits their right to claim banked capacity if the landlord fails to properly deliver the notice to the tenant.

The Department must adopt rules to implement the Banked Capacity Program and establish a process to document when a landlord decides to bank capacity. The Department must also make information about the Banked Capacity Program available on its website, including a method for a tenant to verify their landlord's participation in the program and the amount of total banked capacity for their dwelling unit or mobile home lot.

Remedies.

A tenant who is charged rent in violation of the rent increase limit may sue a landlord to recover actual damages in the amount of the excess rent paid, mandatory punitive damages equal to three months of the unlawful higher rent, and reasonable attorneys' fees and costs incurred in bringing the action.

Rent Increase Notices.

A landlord must provide annual notice to current and prospective tenants of rent increases, possible future rent increases, banked capacity, and tenants' rights regarding rent increases. If a landlord claims an exemption from the rent increase limit, the landlord must include facts supporting the exemption in the rent increase notice. The rent increase notice must be substantially similar in form to the language provided in the bill.

The notice must comply with statutory requirements in the RLTA or MHLTA regarding the minimum number of days' prior written notice that landlord must provide a tenant before a rent increase, and the notice must be served in accordance with the requirements for service of notice under the "unlawful detainer" or eviction proceedings chapter.

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute bill makes a number of changes:

- It modifies the definition of "rent increase" to remove the list of examples.
- It revises the exemption for tenancies in new buildings such that the exemption applies to tenancies in dwelling units for which the first certificates of occupancy were issued 12 or less years, instead of 10 or less years, before the date of the notice of the rent increase.
- It limits the use of banked capacity to a 10 percent annual rent increase. If a landlord uses banked capacity to increase the rent by 10 percent in one year and still has remaining banked capacity, the landlord may retain any remaining banked capacity for potential use in future years.
- It clarifies that under the Banked Capacity Program if a tenant voluntarily moves out and the landlord chooses to charge the new tenant rent in an amount that is the same or less than the amount of rent that the landlord charged the previous tenant, the landlord may retain any banked capacity that was accrued under the prior tenancy.
- It revises the rent increase notice section to reflect the changes made by the substitute bill to the exemptions and the Banked Capacity Program.
- It also makes a number of technical corrections to section numbering.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Rent stabilization makes sense for all involved. Everybody needs a stable place to live. Housing is a necessity not a luxury. Rents have outpaced incomes in Washington for over 20 years. Renters need help right now. Some of the rent increases that have been happening are shocking and in the double digits. Imagine if the bank told homeowners that the costs of their mortgages were going up by 30 percent. That's not something renters should have to worry about either. Reasonable rent increases are one thing, but rent gouging is something else.

Some tenants have seen their rents increase by unaffordable amounts, including up to 40 percent, and some have had to leave their homes. This has a negative impact on their families and communities. Displaced tenants have had to move further away from family and medical providers, and their children have had to change schools. Some tenants are left scrambling to find new places to live. Some manufactured homeowners who own their homes but not the land they live on worry that they will be forced to move out of their

homes and into their cars because they have seen rent increases go up by hundreds of dollars in their communities. Some of these manufactured home communities are made up of hundreds of homes, each paying thousands of dollars per month in rent. If their homes are taken from them, they will lose their equity in their homes and end up relying heavily on social safety net services.

The housing crisis is also a health care crisis. In some communities, teachers are living in cars, essential workers can't find housing, and there have been 50 percent increases in the number of deaths of people who have been homeless. Because of being displaced, some patients are not able to handle their medical conditions. For example, diabetic patients especially have difficulty maintaining their medication at the right temperature if unhoused. For some tenants, their doctors have had to prescribe antianxiety medication due to anxiety caused by rent increases.

There's nothing in this bill that harms landlords. The bill is generous and allows rent increases that exceed increases in expenses. The bill also allows cost of living increases and unlimited rent increases when a tenancy ends. Some small landlords are already able to keep rents at below-market rates and find it manageable, fair, and easy to do. Fair rent prices also mean more diverse communities. Increasing rent simply because a landlord can is wrong.

(Opposed) We are in a housing crisis. This bill may deepen the crisis. Rent-control policy has failed everywhere it has been implemented in this country. While rent control offers a short-term solution, it is not a long-term solution. This bill will apply pressure to an already stressed market. Multiple studies on rent control have found that rent control decreases housing supply. Rent control will disincentivize the building of new units and financing. Banks will require greater equity in these properties. Financing will require higher levels of capital from the borrower in order for financial institutions to protect themselves from the increased risk that the borrower will not be able to pay them back due to these policies. Oregon lost 14 percent of its rental housing stock after Oregon passed rent control, and there is evidence that rent control actually benefits the wealthy.

Property taxes and utility increases are the number one reason for rent increases. For some landlords, property taxes have increased more than their rental income. Some landlords only have monthly net profits of several hundred dollars per month, and some tenants owe landlords a lot of money and do not pay their rent. With rent control on manufactured housing, landlords can easily get into situations where they are not able to recoup costs for repairs to the mobile home park. Many small landlords will be negatively impacted. Food providers do not bear the cost for people who can't afford food, and housing providers shouldn't bear the cost for people who can't afford housing. More restrictive legislation has been passed in the past 5 years than in the first 45 years of the RLTA. The Legislature should find ways to increase growth and housing supply, not restrict it.

(Other) The potential effects of the bill on the housing supply is concerning. The central

issue facing Washington today is that there is not enough housing supply from decades of underbuilding. Extensive research on rent control shows that while rent control offers a simple solution, there's no good evidence that these price controls are an effective long-term answer to the housing affordability crisis. Rent control has a counterproductive impact on the supply of housing that falls disproportionately on poorer households where there is an overrepresentation of minority and immigrant families. Instead, the Legislature should focus on expanding housing diversity, providing more funding for affordable housing production, creating more housing development incentives, and targeting rental support to families who are most in need through increases in rental assistance.

Persons Testifying: (In support) Representative Alex Ramel, prime sponsor; Sharon Pevey, Association of Manufactured Home Owners; Saree Adams; Robert De Gregorio, Washington Physicians for Social Responsibility; Sol Villareal; Emily Noel; Kraig Peck; Julie Crites; Deb Wilson; Caroline Hardy; Tereasa Staley; and Keisha Clemons.

(Opposed) Chester Baldwin, Rental Housing Coalition; Fei Priddy; Mike Hoover, Detente Management; Brad Tower, Community Bankers of Washington; Mary Hull-Drury, Washington Realtors; Mike Ennis, Association of Washington Business; and Chris Dobler, Dobler Management Company.

(Other) Morgan Shook.

Persons Signed In To Testify But Not Testifying: More than 20 persons signed in. Please see committee staff for information.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Housing. Signed by 17 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Harris, Rude, Sandlin, Schmick and Steele.

Minority Report: Without recommendation. Signed by 1 member: Representative Ryu.

Staff: Jessica Van Horne (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Housing:

The second substitute bill adds a rent increase limit exemption for geographic areas where emergencies or other circumstances contribute to significant cost increases as identified by the Department of Commerce (Commerce) through rule. The significant hardship exemption is modified to consider whether sudden and unexpected cost increases have caused the landlord significant hardship. Commerce may charge a filing fee for the significant hardship exemption. The significant hardship, banked capacity, and geographic area exemptions are delayed to come into effect on April 1, 2024, rather than immediately upon the bill's enactment. The exemption for tenancies in certain properties is replaced with an exemption for tenancies in properties owned and operated by a public housing authority, public development authority, or nonprofit organization where maximum rents are regulated by other laws or affordable housing requirements. The second substitute bill limits the liability of the state and Commerce for any loss, damage, or harm resulting from Commerce's administration of the rent increase limit exemptions.

The second substitute bill prohibits a landlord from charging move-in fees and deposits that exceed one month's rent, or from charging a higher rent, or including conditions in a rental agreement that are more burdensome depending on whether the tenancy is month-to-month or longer term. A landlord is also prohibited from reporting a tenant to a tenant screening service provider for failure to pay rent in violation of the second substitute bill. The second substitute bill provides it is a defense to an eviction action if the eviction is for nonpayment of a rent increase that is in violation of the second substitute bill. The Attorney General is authorized to investigate violations of the rent increase limit and practices prohibited by the second substitute bill, issue cease and desist letters, and bring enforcement actions in superior court. The second substitute bill provides that violations of the rent increase limit, notice requirements, and other residential rent practices prohibited by the second substitute bill, are violations of the Consumer Protection Act. The second substitute bill also provides that local governments may, consistent with the second substitute bill, adopt ordinances to provide remedies for and investigate residential rent practices prohibited by the second substitute bill, and assess and enforce civil penalties.

A null and void clause is added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 22, 2023.

Effective Date of Second Substitute Bill: The bill contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) Many tenants are currently suffering due to extreme increases in rent. In the past several years, rent increases have been significant, and often even larger when attempting to go to a month-to-month lease. Moving is also expensive due to the costs of

security deposits and providing first and last month's rent. Rent increases are difficult to understand and potentially illegal. Cities cannot protect renters from these increases. Residents in rural areas are often cost burdened when it comes to the cost of housing. Affordable housing options are scarce. Businesses are unable to recruit workers due to the unstable rent environment in Washington. In addition, the inability to attract workers and residents leads to future losses due to fewer sales and contributions to local economies, which then reduces state sales tax revenue. The state economy and local businesses should not suffer losses due to protections for the rental property industry.

Rent stabilization is not the same as rent control. Investors can set rents before renters move in and after they move out, but then receive cost of living increases during the length of the tenancy. Most of the costs to maintain a rental, such as mortgage payments, are fixed. Other costs are less than rent. Rent stabilization is a key part of the solution to the state housing crisis in addition to policies that address housing supply and building more housing.

Manufactured home communities provide unsubsidized affordable housing opportunities for many vulnerable populations. If rents continue to increase, thousands of park residents will be displaced. Owners of mobile and manufactured homes will need to get public assistance, join a waitlist for other affordable housing options, or will be forced out of the parks and into homelessness. There are many communities where tenants have been priced out during the pandemic and were forced to abandon their homes. When parks have been sold, there have been immediate rent increases that have negatively impacted tenants living on a fixed income.

(Opposed) Pandemic-era policies led to landlords losing income due to delayed rent, no rent payments, and the eviction moratorium. This bill would prevent owners from recovering lost income and making needed improvements to their properties. In cases where owners sell their units, the new owners would be prevented from recouping the costs of conducting necessary repairs. This will reduce investment in the rental market and will cause landlords to convert their units into homes. Converting rental units to owned units will not address housing affordability, as mortgages are much more costly than rents.

Although housing providers are sympathetic to the pressures of the rising costs of housing and rent, this bill is not the way to address the problem. Landlords are also seeing rising costs to conduct day-to-day maintenance and make larger investments into their properties. Costs for fuel, utilities, taxes, insurance, and other costs to maintain a property are rising. Those costs would not be factored into the calculation of rent increases. Tying rent increases to the Consumer Price Index is bogus compared to real inflation. This bill will discourage landlords from staying in business.

Rent control is not the way to solve the housing crisis in Washington. Rent control has clear negative impacts on housing stability and affordability as well as the overall economy. When other jurisdictions enacted rent control measures, it resulted in pausing or

canceling construction. Building new units is economically infeasible under rent control. Rent control will result in falling property values, and the landlords who are most impacted are smaller with lower incomes. The most expensive and newest properties would be exempted from the rent caps.

Rent control will lead to a negative fiscal impact for state finances. Certain studies have shown that a rent cap would create significant losses in property tax revenues.

Other programs exist to address housing affordability in Commerce. These existing programs, like the Landlord Mitigation Program, have not been adequately funded. It would be more effective to fund these programs than to create new programs. It is unclear how the level of staffing assumed in the fiscal note will be able to maintain program data on the entire landlord population in the state.

There are already provisions in law to provide notice to tenants. This bill will add additional layers to the many new policies that have been established in the last few years, such as the dispute resolution process. Previous changes to requirements to provide notice to pay or vacate have led to tenants abusing their rights and ruining units.

Persons Testifying: (In support) Thomas Bethea; Stacey Valenzuela; Navarra Carr, City of Port Angeles; Brianna Vazquez; and Kraig Peck.

(Opposed) Mike Ennis, Association of Washington Business; Jeff Pack, Washington Citizens Against Unfair Taxes; Patricia Hoendermis, Yakima Valley Landlords Association; Cory Brewer; Barbara Korducki; Audrey Riddle, Goodman Real Estate; Mark Harmsworth, Washington Policy Center; Greg Cerbana, Weidner Apartment Homes; Mike Hoover, Detente Management; Christy Mays; Walter Jorgensen; Michael Gustavson, Kitsap Alliance of Property Owners; Tim Eyman; and Larry Jensen.

Persons Signed In To Testify But Not Testifying: None.