



Councilmember Anita Bonds

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A Bill

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Rental Housing Act of 1985 to clarify various definitions associated with hardship petitions, to authorize the Rental Housing Commission to determine the annual guaranteed profit margin applicable to rent surcharges authorized by a hardship petition, to reform the formula for a hardship petition to lower the current housing provider guaranteed 12 percent rate of return to a profit margin ratio based on the current yield rate for a 10-year U.S. Treasury note plus 2 percent, up to a maximum of 8 percent, to cap annual hardship petition increases at 5 percent per year, to require the Rent Administrator to review a hardship petition and to issue to the housing provider and affected tenants an audit report and recommendations for the final disposition of the hardship petition within 60 days of the submission of a completed hardship petition, to require the Rent Administrator to notify the housing provider and affected tenants of certain deadlines, to place limitations upon when a rent surcharge or any other rent adjustment to a hardship petition may be implemented, to change hardship rent adjustments to rent surcharges reviewable after a 3-year period, to specify qualifications for auditors of hardship petitions, to establish the rebuttable presumption that a housing provider has filed a petition in bad faith if an encumbrance has been added following the filing of a petition, to delineate the submissions required for a hardship petition to be deemed to be complete and the conditions for dismissal of a petition, to subject a housing provider that attempts to collect or collects a hardship rent surcharge without the prior approval of a petition or after it has expired to penalties, including treble damages, and civil fines, to clarify the authority of the Rent Administrator to enforce orders relating to petitions and voluntary agreements, to clarify requirements to serve petitions and voluntary agreements on tenants and other affected parties and establish a 30-day deadline for submitting objections to the Rent Administrator, to establish standards for the Rent Administrator to approve a hardship or any other petition or voluntary agreement including: all rental units were inspected for housing code violations within 30 days and all housing code violations have been abated, the petition or voluntary agreement will not undermine the Act's legislative purposes, will protect or enhance the health, safety, and security of the tenants, is not intended to cause displacement of tenants, is not retaliatory, will not violate the Housing Code, and will not result in the violation of applicable environmental regulations, and construction resulting from the petition or voluntary agreement will use Energy Star products and will result in a net savings in the use of energy that will be passed on to the tenants, to require that interest costs and service charges recoverable under a capital improvement, hardship, or substantial rehabilitation petition are limited to

42 the amount that would be charged in an arm’s length transaction, to permit the Rent
43 Administrator to require a housing provider to obtain an independent audit of the books
44 and records of a housing provider who has filed a petition or voluntary agreement, to
45 require the Rent Administrator to consider whether the property is listed by the housing
46 provider for sale or is the subject of a contract for sale at the time of the filing of the
47 petition or voluntary agreement, to require the Rent Administrator to serve a copy of a
48 petition or voluntary agreement on the Office of Tenant Advocate and on each agency
49 included on a list of agencies designated by the Rent Administrator, to require the District
50 of Columbia Office of Administrative Hearings to comply with the same legal standards
51 applicable to the Rent Administrator in exercising jurisdiction and deciding any case
52 transferred to it for an adjudicatory hearing, to clarify that the District of Columbia Office
53 of Administrative Hearings is required to issue an order on a petition or voluntary
54 agreement within 120 days of the transfer of the case to its jurisdiction, and to permit the
55 Attorney General for the District of Columbia to intervene in a proceeding involving a
56 petition or voluntary agreement before the Rent Administrator or the District of Columbia
57 Office of Administrative Hearings.

58 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
59 act may be cited as the “Hardship Petition Reform Amendment Act of 2020”.

60 Sec. 2. The Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C.
61 Official Code §§ 42-3502.01 *et seq.*)), is amended as follows:

62 (a) Section 103 (D.C. Official Code § 42-3501.03) is amended as follows:

63 (1) Paragraph (8A) is redesignated as paragraph (8B).

64 (2) A new paragraph (8A) is added to read as follows:

65 “(8A) “Depreciation” means the allocation of the cost of a tangible asset over its
66 useful life.”.

67 (3) A new paragraph (12A) is added to read as follows:

68 “(12A) “Energy Star” means the voluntary labeling program designed by the U.S.
69 Environmental Protection Agency to identify and promote energy-efficient products.”.

70 (4) Paragraph (13A) is redesignated as paragraph (13B).

71 (5) A new paragraph (13A) is added to read as follows:

72 “(13A) “Guaranteed profit margin” means the percent equal to the average daily
73 yield curve rate on a 10-year United States Treasury note for the month of January of each
74 current year, as published by the United States Treasury Department and as annually computed
75 by the Rental Housing Commission pursuant to section 202(a)(3) plus 2 percent, up to a
76 maximum of 8 percent.”.

77 (6) Paragraph (20) is amended to read as followed:

78 “(20) “Maximum possible rental income” means the sum of the rents charged plus
79 all unexpired rent surcharges and all unexpired but unimplemented rent adjustments and rent
80 surcharges for all rental units in the housing accommodation, whether occupied or not, computed
81 over a base period of 12 consecutive months within the 15 months preceding the date of any
82 hardship petition filed under this act.”

83 (7) Paragraph (23) is amended to read as follows:

84 “(23) “Miscellaneous income” means any income, other than rents charged plus
85 unexpired and implemented rent surcharges, which a housing provider earns because of his or
86 her interest in a housing accommodation, including fees, commissions, income from vending
87 machines, income from laundry facilities, and income from parking and recreational facilities.”.

88 (8) Paragraph (29C) is amended as follows:

89 “(29C) “Rent surcharge” means a temporary charge added to the rent charged for
90 a rental unit pursuant to a capital improvement, hardship, or substantial rehabilitation petition
91 that is not included as part of the rent charged.”.

92 (9) Paragraph (38) is amended by striking the phrase “the amount of rent” and
93 inserting the phrase “the amount of rent charged plus unexpired and implemented rent

94 surcharges” in its place.

95 (a) Section 202(a)(3) (D.C. Official Code § 42-3502.02(a)(3)) is amended as follows:

96 (1) Subparagraph (C) is amended as follows:

97 (A) Strike the word “unit” and insert the phrase “rental unit” in its
98 place; and

99 (B) Strike the phrase “; and” and insert a semicolon in its place.

100 (2) Subparagraph (D) is amended by striking the period and inserting the phrase “;
101 and” in its place.

102 (3) A new subparagraph (E) is added to read as follows:

103 “(E) The annual guaranteed profit margin applicable to rent surcharges authorized
104 by a hardship petition pursuant to section 212.”.

105 (b) Section 212 (D.C. Official Code § 42-3502.12) is amended as follows:

106 (1) Subsection (a) is amended to read as follows:

107 “(a) If a housing provider submits a petition to the Rent Administrator, the Rent
108 Administrator may approve a rent surcharge that in the aggregate, would produce a profit margin
109 of not more than the guaranteed profit margin; provided, that the Rent Administrator determines
110 that the petition demonstrates that the housing accommodation has a profit margin that is less
111 than the guaranteed profit margin.”.

112 (2) Subsection (b) is amended to read as follows:

113 “(b) The following calculations shall be used to determine the rent surcharge:

114 “(1) The Rent Administrator shall calculate adjusted gross income as follows:

115 “(A) First, calculate gross income by adding together the maximum

116 possible rental income and miscellaneous income;

117 “(B) Then subtract from gross income vacancy losses; however, the Rent
118 Administrator may not use an amount that exceeds 6% of the maximum possible rental income.

119 “(2) The Rent Administrator shall calculate expenses by adding together the
120 following:

121 “(A) Operating expenses; however, the following items shall not be
122 included as operating expenses:

123 “(i) Membership fees in organizations established to influence
124 legislation and regulations;

125 “(ii) Contributions to lobbying efforts;

126 “(iii) Contributions for legal fees in the prosecution of class action
127 cases;

128 “(iv) Political contributions to candidates for office;

129 “(v) Mortgage principal payments;

130 “(vi) Maintenance expenses for which the housing provider has
131 been reimbursed by any security deposit, insurance settlement, judgment for damages, agreed
132 upon payments, or any other method;

133 “(vii) Attorney’s fees charged for services that are not ordinary,
134 reasonable, necessary, and related to the normal operation and management of the housing
135 accommodation, including attorney’s fees charged for services connected with counseling or
136 litigation related to actions brought by the District government due to the repeated failure of a
137 housing provider to comply with applicable housing regulations; and

160 “(C) Then calculate the rent surcharge for each rental unit by dividing the
161 amount of additional adjusted gross income calculated pursuant to subparagraph (B) of this
162 paragraph by the adjusted gross income.

163 “(2) If the monthly rent surcharge calculated pursuant to paragraph (1) of this
164 subsection exceeds 5% of the current rent charged, then the housing provider:

165 “(A) Shall only implement the rent surcharge in annual increments of no
166 more than 5% of the current rent charged; and

167 “(B) Shall not implement annual increments of the rent surcharge once the
168 rent surcharge is fully implemented, subject to subsection (g).”.

169 (4) New subsections (d), (e), (f), (g), (h), (i), (j), (k), and (l) are added to read as
170 follows:

171 “(d) The Rent Administrator shall consider and review the hardship petition and supporting
172 documents and, no sooner than within 60 days following the filing of a completed petition issue
173 and serve on the housing provider and all affected tenants an audit report with recommendations
174 regarding accepting or denying expenditures and other financial claims and recommendations for
175 the final disposition of the hardship petition. The audit report of the Rent Administrator shall:

176 “(1) Contain specific findings of fact and conclusions of law regarding the
177 calculation of the amount of the rent surcharge, if any, to be recommended; and

178 “(2) Include specific findings of facts and conclusions of law with respect to
179 whether the hardship petition meets the following standards:

180 “(A) The maximum possible rental income matches the rents charged
181 specified in filings with the Rent Administrator and includes all increases of general applicability

182 within the 3-year period prior to the filing of the petition, whether or not the housing provider
183 implemented them;

184 “(B) The total expenses, actual gross income, and gross income claimed
185 by the housing provider fall within a 12-month period within the past 15 months, as selected by
186 the housing provider preceding the filing of a petition pursuant to this section, and conform to
187 the accounting method, either cash or accrual, regularly used by the housing provider;

188 “(C) Capital expenses are only included if recovered in accordance with
189 the General Depreciation System for residential rental property established pursuant to the
190 Internal Revenue Code (26 U.S.C.);

191 “(D) Extraordinary expenses are only included if recovered in accordance
192 with the General Depreciation System for residential rental property established pursuant to the
193 Internal Revenue Code (26 U.S.C.); and

194 “(E) Mortgage interest payments associated with a mortgage secured
195 within the 3-year period prior to the filing of the petition are not included.

196 “(e) At the same time as the Rent Administrator serves the audit report with
197 recommendations on the housing provider and the affected tenants, the Rent Administrator shall
198 notify the housing provider and all affected tenants that:

199 “(1) Each party has 30 days in which to file with the Rent Administrator and serve
200 written exceptions and objections to the audit report and its recommendations on all other
201 parties;

202 “(2) In the absence of timely filed exceptions or objections, the audit report and
203 recommendations shall become a final order 45 days after it is issued; and

204 “(3) If exceptions or objections are filed by an affected tenant or other party, the
205 Rent Administrator shall transfer the case to the District of Columbia Office of Administrative
206 Hearings for adjudication of the exceptions or objections no later than 45 days after issuing the
207 audit report with recommendations, but no sooner than 10 days after the deadline established
208 pursuant to paragraph (1) of this subsection for the submission of exceptions and objections.

209 “(f) Except for any conditional adjustment authorized under subsection (c) of this section,
210 a housing provider shall not implement a rent surcharge or any other rent adjustment pursuant to
211 a hardship petition until:

212 “(1) A final order is issued;

213 “(2) No appeal is pending; and

214 “(3) The time for appeal has expired.

215 “(g) (1) Rent surcharges authorized pursuant to this section are temporary surcharges and
216 shall remain in effect for no more than 3 years following final approval of the hardship petition.

217 “(2) Notwithstanding paragraph (1) of this section, the Rent Administrator may
218 authorize an extension if the housing provider shows that it has not recovered the rent surcharge
219 authorized by subsection (b-1); provided that the housing provider has implemented the rent
220 surcharge in the same percentage terms each year for each rental unit.

221 “(h) The Rent Administrator shall ensure that an auditor employed to perform audits of
222 hardship petitions, including any contracted auditor, shall:

223 “(1) Be a certified public accountant;

224 “(2) Have expertise in rental housing; and

225 “(3) Have the experience and skills necessary to evaluate the auditing standards

226 set forth in subsection (d) of this section.

227 “(i)(1) If an encumbrance has been added following the filing of a petition under this
228 section, there shall be a rebuttable presumption that the housing provider has filed the petition in
229 bad faith.

230 “(2) The Rent Administrator shall disapprove the petition if he or she determines
231 that the housing provider acted in bad faith.

232 “(j)(1) A hardship petition shall be deemed to be complete for purposes of this section
233 only if the housing provider has submitted:

234 “(A) Complete rental data for the housing accommodation showing for
235 each rental unit:

236 “(i) The rent charged and any applicable rent surcharge or
237 surcharges;

238 “(ii) Any unexpired but unimplemented rent adjustment or rent
239 surcharge;

240 “(iii) The number of the rental unit; and

241 “(iv) The rent surcharge proposed to be charged under the hardship
242 petition; and

243 “(B) All documents required to substantiate the maximum possible rental
244 income, actual vacancy losses, and all expenses of the housing accommodation for the applicable
245 12-month period, including copies of all relevant:

246 “(i) Invoices;

247 “(ii) Cancelled checks and bank statements; and

248 “(iii) Ledgers, journals, or other internally generated records
249 showing the financial transactions of the housing accommodation.

250 “(2) (A) If the Rent Administrator submits a hardship petition with incomplete
251 documentation to the auditor, the report of the auditor shall recommend dismissal of the petition
252 for a lack of proper documentation and the Rent Administrator shall dismiss the petition.

253 “(B) (1) In dismissing a hardship petition for a lack of proper
254 documentation, the Rent Administrator shall dismiss the hardship petition without prejudice;
255 provided, that such a dismissal shall be with prejudice if within the past 12-month period either
256 the Rent Administrator or the District of Columbia Office of Administrative Hearings has
257 dismissed without prejudice a hardship petition for the same housing accommodation for a lack
258 of proper documentation.

259 “(2) A dismissal with prejudice shall operate as an adjudication on
260 the merits, requiring the housing provider to wait a minimum of 12 months following the
261 dismissal before filing a new hardship petition for the same housing accommodation.

262 “(C) If a hardship petition is approved by the Rent Administrator in spite
263 of a lack of proper documentation, the reviewing entity, whether it is the District of Columbia
264 Office of Administrative Hearings, the Rental Housing Commission, or a court of competent
265 jurisdiction, shall vacate the decision as not in accordance with the Rent Stabilization Program.

266 “(k)(1) The housing provider shall include documentation in its submission to the Rent
267 Administrator that the hardship petition, if implemented, will fulfill the requirements of section
268 216(o).

269 “(2) The Rent Administrator shall not approve the hardship petition if the

270 documentation presented does not establish to its satisfaction that, upon implementation, the
271 hardship rent surcharge will fulfill the requirements of subsection 216(o).

272 “(3) If upon implementation of the hardship rent surcharge, the Rent
273 Administrator determines that the hardship rent surcharges do not fulfill the requirements of
274 section 216(o), the housing provider shall terminate the hardship rent surcharge and immediately
275 return to the affected tenants any hardship rent surcharge that has been collected.

276 “(1) A housing provider that attempts to collect or collects a hardship increase without the
277 prior approval of a petition pursuant to this section, or a conditional surcharge pursuant to
278 subsection (c) of this section, shall be deemed to have acted in bad faith and shall be liable to the
279 affected tenants for treble damages pursuant to section 901(a) and subject to civil fines pursuant
280 to section 901(f).”.

281 (c) Section 216 (D.C. Official Code § 42-3502.16) is amended as follows:

282 (1) Subsection (a) is amended to read as follows:

283 “(a)(1) The Rent Administrator shall, upon a petition filed by the housing provider or a
284 tenant, consider rent adjustments allowed by section 206, 208, 211 or 215, rent surcharges
285 allowed by sections 210, 212, and 214, and shall consider any other challenge under the Rent
286 Stabilization Program to a rent charged, rent adjustment, or rent surcharge or enforcement of an
287 order approving any such petition or voluntary agreement.

288 “(2) The petition or voluntary agreement shall be filed with the Rent
289 Administrator on a form provided by the Rent Administrator requiring the information that the
290 Rent Administrator or the Rental Housing Commission may require.

291 “(3) The party filing the petition or voluntary agreement with the Rent

292 Administrator shall serve the petition or voluntary agreement by first-class mail at the same time
293 as it is filed with the Rent Administrator on the affected housing provider and tenants and shall
294 provide notice to all tenants and other parties on a form provided by the Rent Administrator of
295 the right to submit objections to the Rent Administrator within 30 days of receipt of the petition
296 or voluntary agreement.

297 “(4) The Rent Administrator shall issue an order approving or denying, in whole
298 or in part, each petition within 120 days after the completed petition or voluntary agreement is
299 filed with the Rent Administrator, except as may be otherwise provided by the Rent Stabilization
300 Program.

301 “(5) The time for issuing an order may be extended only by written agreement
302 between the housing provider and the affected tenant or tenants upon a finding of good cause by
303 the Rent Administrator.”.

304 (2) New subsections (n), (o), (p), (q), (r), (s), (t), and (u) are added to read as
305 follows:

306 “(n)(1) Notwithstanding any other provision of the Rent Stabilization Program, the Rent
307 Administrator shall not accept for filing any petition for a rent adjustment pursuant to section
308 211 or section 215 or for a rent surcharge pursuant to section 210, 212, or 214 unless:

309 “(A) The housing provider presents proof that, no more than 30 days prior
310 to the date of filing the petition or the voluntary agreement, all rental units and the common areas
311 of the housing accommodation were inspected for housing code violations as required by section
312 208(b)(2) or re-inspected as necessary to certify the abatement of any such violation; and

313 “(B) The housing provider has abated all substantial violations in the time

314 set forth in the notice of violation and prior to filing the petition.

315 “(2) Paragraph (1) of this subsection shall not apply to a rental unit if the tenant
316 denied access to the rental unit for the inspection.

317 “(3) The failure of a housing provider to comply with this subsection shall be an
318 independent basis for dismissal of any petition filed pursuant to section 210, 211, 212, or 214 or
319 any voluntary agreement filed pursuant to section 215.

320 “(4) Nothing herein relieves or purports to relieve a housing provider from
321 complying with the requirements of Title 14 of D.C.M.R.

322 “(o) The Rent Administrator shall not approve a petition for a rent adjustment pursuant to
323 section 211, a rent surcharge pursuant to section 210, 212, or 214, or a voluntary agreement
324 pursuant to section 215 unless the Rent Administrator determines that:

325 “(1) The petition or voluntary agreement will not undermine the legislative
326 purposes of this act, including the need to prevent the erosion of moderately priced rental
327 housing while providing housing providers and developers with a reasonable rate of return on
328 their investments;

329 “(2) The petition or voluntary agreement will protect or enhance the health,
330 safety, and security of the tenants or the habitability of the housing accommodation;

331 “(3) The petition or voluntary agreement is not intended to cause displacement of
332 tenants from the housing accommodation;

333 “(4) The petition or voluntary agreement is not retaliatory, as defined in section
334 502 of this act;

335 “(5) The housing provider is not pursuing the petition or voluntary agreement for

336 the purpose of unreasonably interfering with the use and enjoyment of a rental unit by a tenant;

337 “(6) The petition or voluntary agreement will not directly result in a violation of

338 the Housing Code;

339 “(7) The petition or voluntary agreement will not result in the violation of

340 applicable environmental regulations; and

341 “(8) Construction resulting from a petition filed pursuant to section 210, 211, 212,

342 or 214 or any voluntary agreement filed pursuant to section 215 shall:

343 “(1) Use Energy Star products whenever available for the product type;

344 and

345 “(2)(A) Result in a net savings in the use of energy by the affected rental

346 units and the housing accommodation to the maximum extent practicable;

347 “(B) Pass on to the tenants all savings in energy costs.

348 “(p) Whenever the cost of a loan is part of any petition filed pursuant to section 210, 212,

349 or 214, the recoverable interest costs and service charges shall be limited to the amount that

350 would be charged in an arm’s length transaction for a similar contemporaneous transaction in the

351 District and shall be reduced over time as necessary to take into account any future reduction in

352 interest payments or service charges.

353 “(q) The Rent Administrator may require the housing provider to obtain an independent

354 audit of the books and records of the housing provider and the proposal included in its petition or

355 voluntary agreement application and shall require the housing provider to produce any and all

356 documents necessary to determine the accuracy and lawfulness of any rent surcharge proposed

357 pursuant to a petition filed under section 210, 212, or 214 or any rent adjustment proposed

358 pursuant to section 211 or 215.

359 “(r) In making an affirmative finding that any petition filed pursuant to section 210, 211,
360 212, or 214 or a voluntary agreement filed pursuant to section 215 is in the interest of the tenants,
361 the Rent Administrator shall consider whether the property is listed by the housing provider for
362 sale or is the subject of a contract for sale at the time of the filing of the petition or voluntary
363 agreement or during its pendency.

364 “(s)(1) The Rent Administrator shall serve a copy of any petition filed pursuant to section
365 210, 211, 212, or 214 or a voluntary agreement filed pursuant to section 215 on the Office of
366 Tenant Advocate and on each agency included on a list of agencies designated by the Rent
367 Administrator and updated from time to time that provide organizing, technical assistance, and
368 legal services to tenants.

369 “(2) The Rent Administrator shall publish or cause to be published all petitions in
370 the electronic database established pursuant to section 203a.

371 “(t) (1) If an adjudicative hearing of any type is required to resolve a contested case in a
372 proceeding arising from a petition filed pursuant to section 210, 211, 212, 214, or 216 or a
373 voluntary agreement filed pursuant to section 215, the District of Columbia Office of
374 Administrative Hearings (“OAH”) shall have jurisdiction to hold such a hearing and make a final
375 disposition of the case by order as provided in § 2-1831.03(b-1); provided, that OAH shall:

376 “(A) Be subject to all requirements of the Act applicable to the petition or
377 the voluntary agreement; and

378 “(B) Act in strict accordance with the authority provided by the Act to the
379 Rent Administrator in resolving the case.

380 “(2) The 120-day period for issuing an order under section 216(a)(3) shall not
381 start to run until the case is transferred to OAH for adjudication.

382 “(u) The Attorney General for the District of Columbia may intervene in a proceeding
383 before the Rent Administrator or OAH involving a petition filed pursuant to section 210, 211,
384 212, 214, or 216 or a voluntary agreement filed pursuant to section 215.”.

385 Sec. 3. Fiscal impact statement.

386 The Council adopts the fiscal impact statement in the committee report as the fiscal
387 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
388 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

389 Sec. 4. Effective date.

390 This act shall take effect following approval by the Mayor (or in the event of veto by the
391 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
392 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
393 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
394 Columbia Register.