

# SENATE BILL REPORT

## SB 5435

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As of January 27, 2023

**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:** Senators Trudeau, Saldaña, Frame, Hunt, Keiser, Kuderer, Lovelett, Nguyen, Robinson, Stanford and Wilson, C..

**Brief History:**

**Committee Activity:** Housing: 1/27/23.

**Brief Summary of 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 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.
- Creates a cause of action against landlords for tenants who are charged and pay rent that exceeds the rent increase limit to recover damages and attorneys' fees and costs.

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### SENATE COMMITTEE ON HOUSING

**Staff:** Riley Bengé (786-7316)

**Background:** Residential Landlord-Tenant Act. The Residential Landlord-Tenant Act

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*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.*

(RLTA) regulates the creation of residential tenancies and the relationship between landlords and tenants of residential dwelling units. The RLTA establishes rights and duties of both tenants and landlords, procedures for the parties to enforce their rights, how and when a tenancy expires or may be ended, and remedies for violations of the RLTA.

Notice of a Rent Increase. Except for rental agreements governing subsidized tenancies, a landlord is generally required to provide each affected tenant a minimum of 60 days prior written notice of an increase in the amount of rent. Any increase in the amount of rent may not become effective before completion of the term of the rental agreement.

For subsidized tenancies where the rental amount is based on the income of the tenant or circumstances specific to the subsidized household, a landlord must provide each affected tenant at least 30 days prior written notice of an increase in the amount of rent. An increase in the amount of rent may become effective at the end of the rental term or sooner upon mutual consent.

Manufactured/Mobile Home Landlord-Tenant Act. The Manufactured/Mobile Home Landlord-Tenant Act (MHLTA) regulates the relationship between the owner of a manufactured/mobile home community (landlord) and the owner of the manufactured or mobile home (tenant). The act specifies what must be in the rental agreement before a tenant moves in, the responsibilities of the landlord and the tenant, and provides a dispute resolution program through the Attorney General's Office.

Notice of a Rent Increase. A rental agreement between a landlord and a tenant may not contain any provision which allows the landlord to alter the due date for rent payments or 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 rental agreement for a term exceeding two years may provide annual increases in rent in specified amounts or by a formula specified in such agreement.

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.

Any rent increase that occurs within the closure notice period for a change of land use of the mobile home park may not be more than one percentage point above the United States consumer price index (CPI) for all urban consumers, housing component, published by the United States Bureau of Labor Statistics in the periodical "Monthly Labor Review and Handbook of Labor Statistics" established annually by the United States Department of Commerce.

**Summary of 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 CPI or 3 percent, whichever is

greater, up to a maximum of 7 percent above the existing rent.

The Department of Commerce (Commerce) 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 thereafter. The rate of inflation as measured by consumer price index means the September, 12-month percent change in the CPI for all urban consumers (CPI-U), west region, all times, not seasonally adjusted, or a successor index, published each September by the United States Department of Labor, Bureau of Labor Statistics.

Exemptions from the Rent Increase Limit. A landlord may increase rent in an amount greater than the rent increase limit under certain exemptions from the rent increase limit. Exemptions apply to new buildings and publicly funded properties. Exemptions are also available in certain cases where the landlord paid for improvements to the property, is experiencing significant hardship, or participates in the banked capacity program operated by Commerce.

*New Buildings.* If the first certificate of occupancy for the dwelling unit was issued ten 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 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 or common areas of the rental property 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 up to 7 percent, or 4 percent plus the maximum allowable annual rent increase percentage allowed for the calendar year.

*Significant Hardship.* If a landlord is experiencing significant hardship complying with the maximum annual rent increase percentage 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 Commerce issue a significant hardship exemption and approve an alternate maximum annual rent increase percentage consistent with the increased local costs for providing housing.

Commerce must adopt rules to establish a process to review landlord requests for individual hardship exemptions. When issuing hardship exemptions, Commerce must consider

evidence of the landlord's hardship; the landlord's actual costs for providing housing; and the local and statewide costs for maintenance, operating expenses, and property taxes.

Commerce 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.* If a landlord participates in the Banked Capacity Program administered by Commerce, the landlord may increase the rent above the maximum annual rent increase percentage by an additional 3 percent for each year the landlord has banked capacity.

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. Within certain limitations, for each preceding year since the last increase in rent, the landlord may increase rent by an additional 3 percent. 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 they fail to properly deliver notice to the tenant.

Commerce must adopt rules to implement the Banked Capacity Program and establish a process to document when a landlord decides to bank capacity. Commerce 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.

*Limitations on Banked Capacity.* The landlord's ability to use banked capacity is limited in certain circumstances.

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. 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.

Notice of a Rent Increase. 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 notice of a rent increase.

Remedies. A tenant who is charged and pays rent in excess of the rent increase limit has a cause of action against the landlord to recover actual damages in the amount of the excess rent paid, mandatory punitive damages equal to three months of the higher rent paid by the tenant, and reasonable attorneys' fees and costs incurred in bringing the action.

**Appropriation:** None.

**Fiscal Note:** Requested on January 23, 2023.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: This bill directly and immediately addresses an issue that is crushing communities: the dramatic rent increases occurring across Washington State. We can't ignore the issue any longer. High rents keep people from finding permanent housing and push people out of housing. The rents have risen to a point that has made certain vouchers useless because those with vouchers are unable to find housing that is within the voucher's price range. Rising rents leave little left over for basic needs like groceries. Although many proposals to increase housing are being worked on, many will take years to materialize. This policy is presented as relief for working people and families right now. It is not blame, not accusation, it is an attempt to fix a real problem. Rent stabilization is good for communities. Homeownership provides socioemotional stability. If you can't afford rent, then you can't afford to become a homeowner. There is value to kids being able to stay in the same schools, getting to know neighbors, and building communities. Rent stabilization allows this same stability to be felt by renters. Building more homes is important, but not sufficient. The bill is reasonable and allows rent increases that exceed expenses. Property depreciation and expense write offs will still allow profitability. The high cost of housing is also hurting our workforce. We need to protect the elderly, vulnerable population. The bill would prevent predatory activity by landlords. The wait list for subsidized housing is years long and vacancy rates are low so moving is difficult.

CON: Rent control could have unintended consequences. Since Oregon enacted rent control it has dissuaded developers from developing and building there. Rent control has failed everywhere it has been tried. Rent control has negative impacts on housing stability and housing affordability. Rent control has been around in San Francisco and New York and

they have the highest rents. Rent control does not work for the public. High rents are caused by limited supply of housing and rent control can restrict growth of more houses. Supply is limited by construction regulation under the Growth Management Act. More housing may not be built as a result of capping rent increases. The price of developing will become higher in areas with rent control and housing providers will choose to build elsewhere. Developers are seeking equity and equity wants to go where there is not rent control. Landlords were unable to raise rent for 2 years during the eviction moratorium and were also unable to collect rent regularly. Rental rates also reflect the increase in cost of providing housing. Taxes continue to rise at a high rate and that limits improvements that landlords can make. The banking option of rent would not work for those working to improve the facilities over years. This bill would regulate landlords by CPI, which does not reflect reality. We need two housing markets: public and private housing and we need more friendly policies to create more housing. More housing means more jobs and more property taxes. Alaska does low interest loans for housing, so they can get investment. Office buildings can be converted to housing and we should explore public or private partnerships.

**Persons Testifying:** PRO: Senator Yasmin Trudeau, Prime Sponsor; Robert De Gregorio, WPSR; Kasey Burton, Tenant Law Center; Sol Villareal; Tonya Hennen; Larkspur Langston; Kraig Peck; Pedro Alfaro; Brianna Vazquez; Saree Adams; Dania Otto; Sharon Pevey; Caroline Hardy; Tereasa Staley; Deb Wilson; Kasey Burton, Catholic Charities Western Washington; Patricia Walker; Cathy Niva; Guillermo Rivera; Robert De Gregorio; Clifford Cawthon, Habitat of Humanity Seattle, King and Kittitas County.

CON: Chester Baldwin, Rental Housing Coalition; Brad Tower, Community Bankers of Washington; GORDON HAGGERTY; Fei Priddy; Bruce Becker, Bruce Becker; Dan Piantanida, GP Realty Finance; Mike Hoover, Detente Management; Robert Hardy; Ryan Makinster, Washington Multi-Family Housing Association; Lora Janssen; Patricia Hoendermis, Yakima Valley Landlords Association; Cathy Jeney; Rick Glenn, Yakima Valley Landlords Association; Cory Brewer; Mike Ennis, Association of Washington Business; Albert Angelo, Al Angelo Company; Chris Dobler, N/A; Michael Gustavson, Kitsap Alliance of Property Owners.

**Persons Signed In To Testify But Not Testifying:** PRO: Ishbel Dickens, Assoc of Manufactured Home Owners; Stacey Valenzuela; Karen Vail; Julie Picard; Robert Brandenburg; Councilmember Lisa Parshley, Olympia City Council; Anne Sadler, Association of Manufactured Home Owners - AMHO; Terri Anderson, Tenants Union of Washington State - Spokane; Danyelle Robinson, voter; Daniel Hornal, Tenants Revolt; Jeff Campbell; Terri Anderson; Mei Shah; Kimberly Ellefson; Kehaulani Walker; Stacey Valenzuela; Anne Sadler; Ishbel Dickens; Michele Thomas, Washington Low Income Housing Alliance; Amber Abrahamson, Tenants Union of Washington State; Holly Bradley.

CON: Jeff Pack, Me; Arthur Grafton; Threasa Melton; Jennifer Lekisch; Walter Jorgensen; Aurangzeb Albar; Jennifer Lekisch; Russ Millard, MHCW; ALEXANDER ZAMORA, Institute of Real Estate Management; Mackinley Robinson; Tyler Smith, Real Estate Brokerage; David Nagel; Joe Levin, myself; Ben Douglas; C Davis, Voters for Responsible

Government; Elaine Armstrong, Clark County Rental Association; Real LeBeuf; Jake Nellis; Jennifer Wagner; STEVE OHARA; Bob Kim, BOSL Investment LLC; Mary Matthews-Brownell, None; Sandra Eisert; Jamie Turner; Clark Lane; Jennifer Lekisch; Saint Newton; Nora Schultz; Jennifer Lekisch; carl haglund; Julie Bridges; Jeremy Millard; Jonathan Millard; Chelsy Parrish; Chris Breske; Steve Leybourne; Eli Secor; Elisa Lyles; Elisa Lyles; Jillian Walker; Jennifer Loughrey; Saane Tome; Misty Lopez Gombos; Sarah Chernicoff; Astrid Black; Maria Magouirk; Jennifer Wetter; Tobi Snider.