

---

# A BILL FOR AN ACT

---

RELATING TO AFFORDABLE HOUSING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. In most cases, landlords in Hawaii are able to  
2 increase the rent on rental units without much concern over  
3 whether the unit will sit vacant because of the scarcity of  
4 affordable housing. Even if a landlord's current tenant cannot  
5 afford the increased rent on a rental unit, there is likely  
6 another tenant willing to take the current tenant's place.

7       While turnover in tenants as a result of increased rents  
8 benefits the landlords and property owners, it does not always  
9 benefit the community. Tenants who know that they could be  
10 priced out of their current residence have no incentive to  
11 invest in their community. If rents were stable and tenants  
12 could be assured that they would face only reasonable increases,  
13 then tenants may stay in their rental units longer and invest in  
14 the community around them.

15       The legislature finds that tenants need some semblance of  
16 housing security but landlords and property owners also need the  
17 ability to increase their rents by a reasonable amount. The



1 legislature further finds that the policy of rent stabilization,  
2 which is distinct from a policy of rent control, could  
3 simultaneously respond to those opposing needs.

4 The purpose of this Act is to establish a rent  
5 stabilization law that will apply to all rental units located in  
6 structures that are over ten years old.

7 SECTION 2. The Hawaii Revised Statutes is amended by  
8 adding a new chapter to be appropriately designated and to read  
9 as follows:

10 **"CHAPTER**

11 **RENT STABILIZATION**

12 § -1 **Definitions.** For purposes of this chapter, unless  
13 context requires otherwise:

14 "Action" means the same as the term is defined in section  
15 521-8.

16 "Basic and essential utility services" include electricity,  
17 water, sewer, and natural gas, but not include services such as  
18 telephone, internet, or television cable service.

19 "Break in occupancy" means a period of time that a tenant  
20 does not occupy a dwelling unit due to:

21 (1) The end of a tenant's lease; or



(2) The mutual agreement by the landlord and tenant that a tenant will vacate the dwelling unit; provided that a break in occupancy does not include the time period where a landlord relocates a tenant to complete repairs or renovation on a dwelling unit.

"Capital expenditure" means a permanent improvement or renovation, including the painting of the exterior of the structure or common areas of a structure within which a dwelling unit is located, that:

(1) Is allowable as a capital expenditure under Internal Revenue Service regulations;

(2) Is not an ordinary repair or maintenance; and

(3) Will be used for at least five years after the date of completion of such capital expenditure.

"Continuously occupied" means:

(1) Occupied by one tenant for a certain period of time; or

(2) Occupied by different tenants with breaks in occupancy by tenants of no more than three months between each occupancy for a certain period of time.



"Department" means the department of commerce and consumer affairs.

"Dwelling unit" means the same as the term defined in section 521-8.

"Family" includes a family of one.

"Landlord" means the same as the term defined in section 521-8.

"Monthly base rent" means the monthly rent paid by a tenant for a dwelling unit, calculated in accordance with this chapter.

"Notice of termination of tenancy" means any notice, oral or written, given to a tenant for the purpose of having the tenant vacate a dwelling unit.

"Owner" means the same as the term defined in section 521-8.

"Periodically occupied" means occupied by different tenants with at least one break in occupancy lasting longer than three months but no longer than twelve months.

"Rental agreement" means the same as the term defined in section 521-8.

"Single family residence" means the same as the term defined in section 521-8.



1 "Sporadically occupied" means occupied by different tenants  
2 with at least one break in occupancy lasting longer than twelve  
3 months.

4 "Tenant" means the same as the term defined in section 521-  
5 8.

6 § -2 Application. (a) The provisions of this chapter  
7 shall apply to all dwelling units designed for rental use or  
8 rented, including dwelling units that are subleased by tenants,  
9 at any time on or after July 1, 2018, except for dwelling units  
10 listed in subsection (b).

11 (b) The provisions of this chapter shall not apply to:

12 (1) A dwelling unit in a single family residence; provided  
13 that the single family residence does not rent more  
14 than dwelling units to families who are not  
15 related to the property owner by blood, marriage, or  
16 adoption;

17 (2) Dwelling units located in structures less than ten  
18 years old; provided that:

19 (A) The structure did not replace a structure that  
20 provided dwelling units for rent; and



(B) The tenants that rented dwelling units in the previous structure were not evicted for the purpose of allowing the property owner to build the current structure;

(3) Accommodations in hotels, motels, and inns that are primarily rented to guests for a period of thirty days; provided that the same tenant has not occupied one or more of the dwelling units in a single structure for more than thirty consecutive days;

(4) A dwelling unit that is owned, operated, or managed by a government unit, agency, or authority for purposes of providing housing to low-income, very low-income, or extremely low-income households; and

(5) A dwelling unit in an institution that is monitored or licensed by the State, and provides medical, geriatric, or educational services.

§ -3 Rent stabilization office. There shall be established within the department a rent stabilization office, which shall set the maximum monthly rent that may be charged for a dwelling unit in each county.



1           §   -4 Waiver. (a) Except as provided in in subsection  
2 (b), an agreement between a tenant and a landlord to waive any  
3 provision of this chapter shall be prohibited.

4           (b) A landlord and tenant may agree to:

5           (1) Waive an increase in the monthly rent; provided that  
6               no consideration, monetary or otherwise, shall be  
7               offered or accepted by the landlord or tenant in  
8               exchange for the waiver; or

9           (2) Waive all or a portion of the monthly rent; provided  
10           that no consideration, monetary or otherwise, shall be  
11           offered or accepted by the landlord or tenant in  
12           exchange for the waiver.

13          §   -5 Unlawful actions. (a) It shall be unlawful for an  
14 landlord to demand, accept, receive, or retain any payment of  
15 rent in excess of the maximum lawful rent allowed by the  
16 provisions of this chapter.

17          The failure of the landlord to reduce the monthly rent to  
18 the allowable monthly rent and reimburse or credit the excess  
19 rent collected to the tenant within           days after the landlord  
20 has been given written notice from the department that the  
21 amount of rent charged is or will exceed the maximum allowable



1 rent shall constitute prima facie evidence of the intent of the  
2 landlord to circumvent the application of this chapter.

3 (b) It shall be unlawful for a landlord to reduce housing  
4 services with the intent or for the purpose of circumventing the  
5 provisions of this chapter. Such reduction of housing services  
6 shall be deemed an increase in rent equal to the amount of the  
7 monetary advantage achieved by the landlord or the amount of the  
8 cost incurred by the tenant to obtain equivalent housing  
9 services by other means, whichever is greater.

10 The failure of the landlord to reinstate the reduced  
11 housing services within days after the landlord has been  
12 given written notice by the department that the reduction in  
13 housing services is a violation of the provisions of this  
14 chapter shall constitute prima facie evidence of the intent of  
15 the landlord to circumvent the application of this chapter.

16 (c) A landlord shall not issue or cause to be issued a  
17 notice of termination of tenancy in order to circumvent the  
18 application of this chapter.

19 The failure of a landlord to withdraw any such notice of  
20 termination within days after the landlord has been given  
21 written notice by the department that such notice of termination





1 of tenancy is in violation of the provisions of this chapter  
2 shall constitute prima facie evidence of the intent of the  
3 landlord to circumvent the application of this chapter.

4 (d) A landlord shall not evict or attempt to evict a  
5 tenant, or regain or attempt to regain the possession of a  
6 dwelling unit from a tenant, upon a pretext that the landlord  
7 desires occupancy for the landlord or a relative in order to  
8 circumvent the provisions of this chapter. A tenant in such  
9 circumstances may refuse to deliver possession of the dwelling  
10 unit and may establish the landlord's pretext as a defense in  
11 any action brought by the landlord to recover the possession of  
12 the dwelling unit.

13 § -6 Base monthly rents. (a) For all dwelling units  
14 rented or offered to be rented that are under the jurisdiction  
15 of this chapter, a landlord may charge a tenant a base monthly  
16 rent, as calculated in this chapter.

17 (b) Base monthly rent for dwelling units occupied by a  
18 tenant or advertised for rent on July 1, 2018. Effective July  
19 1, 2018, a landlord may charge a base rent for a dwelling unit  
20 equal to:



1 (1) The maximum monthly rent set by the rent stabilization  
2 office pursuant to section -3; and

3 (2) The average monthly rent charged for the dwelling unit  
4 for the past months prior to July 1, 2018.

5 (c) Base monthly rent for dwelling units that come under  
6 the jurisdiction of this chapter after July 1, 2018. Effective  
7 on the date a dwelling unit comes under the jurisdiction of this  
8 chapter, a landlord may charge a base rent for a dwelling unit  
9 equal to:

10 (1) The maximum monthly rent set by the rent stabilization  
11 office pursuant to section -3; and

12 (2) The average monthly rent charged for the dwelling unit  
13 for months prior to the dwelling unit coming under  
14 the jurisdiction of this chapter.

15 § -7 Monthly rent increases. (a) A landlord shall be  
16 permitted to recalculate a tenant's base monthly rent once every  
17 twelve months, or sooner if permitted under a rental agreement,  
18 and shall increase the base monthly rent by no more than allowed  
19 by the provisions of this chapter.

20 (b) A landlord of a dwelling unit subject to a rental  
21 agreement shall be permitted to increase a dwelling unit's base



1 monthly rate by a maximum of            per cent at the end of the  
2 term of the rental agreement. The recalculated, increased  
3 monthly base rate shall be in effect for a term established by  
4 the new rental agreement and shall be the base monthly rate used  
5 to calculate the next monthly base rate increase.

6        (c) A landlord of a dwelling unit rented on a month-to-  
7 month basis shall be permitted to increase a dwelling unit's  
8 base monthly rate by a maximum of            per cent of the base  
9 monthly rate. The recalculated, increased monthly base rate  
10 shall be in effect for a term of twelve months and shall be the  
11 base monthly rate used to calculate the next monthly base rate  
12 increase.

13        (d) Surcharges permitted under this chapter shall not be  
14 considered to be part of the base monthly rent for a dwelling  
15 unit.

16        §    -8    **Security deposits.** Any security deposit lawfully  
17 imposed by the landlord on a tenant may be increased by the same  
18 percentage as the base rent at the time the base rent is  
19 recomputed.

20        §    -9    **Registration of dwelling unit required.** (a) A  
21 dwelling unit shall be registered with the department no less



1 than months prior to increasing the monthly rent on any  
2 dwelling unit.

3 (b) A property owner or landlord that fails to register a  
4 dwelling unit with the department pursuant to subsection (a)  
5 shall not increase the monthly rent of the dwelling unit.

6 (c) An action may be brought against a landlord that  
7 increases the monthly rent of the dwelling unit without  
8 registering the dwelling unit with the department pursuant to  
9 this chapter.

10 § -10 Capital expenditure surcharge. (a) A landlord  
11 shall be permitted to temporarily increase monthly rent to  
12 include a surcharge for a capital expenditure. The surcharge  
13 shall be based on the actual cost of the capital expenditure  
14 plus any interest on a loan that a landlord may have secured for  
15 the capital expenditure. A landlord shall not add a capital  
16 expenditure surcharge to a tenant's monthly rent after the  
17 landlord has recovered the cost of the capital expenditure plus  
18 a reasonable interest rate on a loan obtained by the landlord to  
19 pay for the capital expenditure.

20 (b) A capital expenditure surcharge shall be calculated as  
21 follows:



1           (1) If a capital expenditure benefited all the dwelling  
2           units in the structure, the capital expenditure  
3           surcharge shall be prorated among all the tenants'  
4           rents on a square footage basis of the dwelling units;  
5           and

6           (2) If the capital expenditure solely benefits one or more  
7           of the dwelling units but less than to all the  
8           dwelling units, the capital expenditure shall be  
9           prorated only with respect to the dwelling units which  
10          benefitted from the capital expenditure.

11          (c) Unless a state or county law, regulation, or rule,  
12          provides for a longer notice period or a longer notice period is  
13          provided by a contract or rental agreement, a landlord shall  
14          provide a tenant with a minimum of three months of notice that a  
15          capital expenditure surcharge will be added to the monthly rent,  
16          the proration calculation, the amount of the monthly capital  
17          expenditure surcharge, and the approximate date that the monthly  
18          capital expenditure surcharge will begin and end.

19          (d) Except where capital expenditures are required by law,  
20          any capital expenditure to the interior of any dwelling unit  
21          shall only be performed with the written consent of the tenant,



1 or the landlord shall not be entitled to add a capital  
2 expenditure surcharge to the monthly base rent. The tenant of  
3 the dwelling unit shall not unreasonably withhold such consent.

4 (e) Upon a request by a tenant, the landlord shall provide  
5 the tenant with copies of documents used by the landlord in  
6 determining the amount of the capital expenditure surcharge and  
7 the proration calculation. The surcharge shall be abated until  
8 such time as the landlord mails such documentation addressed to  
9 the tenant with adequate postage.

10 (f) No landlord shall be entitled to any surcharge based  
11 upon any capital expenditure, the computation or representation  
12 of which has been arrived at collusively between the landlord  
13 and a contractor or other person.

14 **§ -11 Utility expense surcharge.** (a) When the base  
15 rent of a dwelling unit includes one or more of the basic and  
16 essential utility services at the time of the recalculation of  
17 the base monthly rent, the landlord shall be permitted to add a  
18 surcharge for the increased cost of any such utility service.

19 (b) Utility surcharge calculation. The utility surcharge  
20 shall be calculated at the same time that the monthly rent is  
21 recalculated. The increase in utility costs is calculated by



1 comparing the utility costs of the twelve-month period  
2 immediately preceding the date of the monthly rent recalculation  
3 with the utility costs for the twelve-month period starting  
4 twenty-four months preceding the date of the monthly rent  
5 recalculation.

6 If there was an increase in the utility costs for the  
7 twelve-month period immediately preceding the date of the  
8 monthly rent calculation, the landlord shall be permitted to  
9 pass through the utility costs, prorated among all the tenants  
10 whose base monthly rent includes such utility service on a  
11 square footage basis, and payable one-twelfth of the total  
12 increase per month.

13 (c) Upon a request by a tenant, the landlord shall provide  
14 the tenant with copies of documents used by the landlord in  
15 determining the amount of the utility surcharge and the  
16 proration calculation. The surcharge shall be abated until such  
17 time as the landlord mails such documentation addressed to the  
18 tenant with adequate postage.

19 § -12 Surcharge for expenses mandated by law. (a) The  
20 landlord may pass through to the tenant of a dwelling unit the  
21 cost of any improvement to the structure mandated by any



1 government statute, rule, or regulation after July 1, 2018, as a  
2 surcharge prorated among all the tenants' rents on a square  
3 footage basis of the dwelling units.

4 (b) Upon a request by a tenant, the landlord shall provide  
5 the tenant with copies of documents used by the landlord in  
6 determining the amount of the surcharge and the proration  
7 calculation. The surcharge shall be abated until such time as  
8 the landlord mails such documentation addressed to the tenant  
9 with adequate postage.

10 § -13 Suspension of application; re-renting a dwelling  
11 unit after a voluntary vacancy. The application of this chapter  
12 to a dwelling unit shall be suspended for the period of time  
13 after which the dwelling unit is voluntarily vacated by all  
14 tenants and the dwelling unit remains vacant for a period of  
15 longer than twelve months. Upon the re-renting of the dwelling  
16 unit, the dwelling unit shall be immediately subject to the  
17 provisions of this chapter.

18 § -14 Remedies. (a) A tenant or the department may  
19 file for a civil action to enforce the provisions of this  
20 chapter.





1 (b) A tenant may refuse to pay an increase in rent that is  
2 in violation of the provisions of this chapter, and such  
3 violation shall be a defense in any action brought to recover  
4 the possession of a dwelling unit or to collect rent.

5 (c) Whenever it is necessary for a tenant of a dwelling  
6 unit to file a court action to recover the payment of rent which  
7 was in excess of the maximum lawful rent allowed by the  
8 provisions of this chapter, or whenever it is necessary for the  
9 tenant to defend against any wrongful action filed in court  
10 against the tenant by the landlord to recover the possession of  
11 the tenant's dwelling unit, the landlord shall be liable to the  
12 tenant for damages in the amount of \$ or not more than  
13 three times the amount by which the payment demanded, accepted,  
14 received, or retained exceed the lawful amount of rent,  
15 whichever is more. The prevailing party in any such suit shall  
16 be entitled to reasonable attorney's fees and costs as  
17 determined by the court.

18 SECTION 3. If any provision of this Act, or the  
19 application thereof to any person or circumstance, is held  
20 invalid, the invalidity does not affect other provisions or  
21 applications of the Act that can be given effect without the



# H.B. NO. 2575

1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 4. This Act shall take effect on July 1, 2018.

4

INTRODUCED BY:

Cal 28  
Chen Hill  
Sen Quirk  
De Hlt  
Mildred K. Phuh

JAN 24 2018



# H.B. NO. 2575

**Report Title:**

Rent Stabilization; Affordable Housing; Maximum Monthly Rent

**Description:**

Establishes a new chapter for rent stabilization. Enumerates unlawful actions, details the process for calculating the maximum monthly rent and yearly increases and surcharges for dwelling units under the jurisdiction of the chapter, and provides for remedies for violations of this chapter.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

