

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 252 (Mia Bonta)  
Version: June 14, 2022  
Hearing Date: June 28, 2022  
Fiscal: No  
Urgency: No  
TSG

**SUBJECT**

Floating home marinas: rent caps

**DIGEST**

This bill would restrict the annual amount by which a marina could increase the rent for a floating home berth to three percent plus inflation up to a maximum of five percent.

**EXECUTIVE SUMMARY**

There are about 500 floating homes in California. As the name implies, a floating home is a residence docked in a berth in a marina, from which the floating home typically gets its utility connections. The owner of a floating home holds title to the vessel itself, but rents the berth at which the vessel is docked from the marina. Floating homes are not easy to move and there are only a very limited number of marina berths available. Existing state law does not limit how much a marina can charge for a floating home berth. As a result, there is little that floating homeowners can do when their marinas decide to increase the rent significantly, as at least one large marina has reportedly done recently. Not only must the floating home owner pay the higher rent; the sale value of the floating home goes down as well, because any buyer will inherit the higher rent bill with the vessel. To help address this dynamic, this bill would restrict the amount by which a marina could increase the berth rent for a floating home each year to three percent plus inflation up to a maximum increase of five percent. These rent restrictions would apply even through a change in the vessel's ownership.

The bill is sponsored by the Bay Area Floating Homes Association. Support comes from local elected officials in places with floating home marinas and from floating home residents. There is no known opposition. The bill was gutted and amended on June 14, 2022 to introduce the current content. If the bill passes out of this Committee, it will next be heard on the Senate Floor.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Defines a “floating home” to mean a floating structure which is all of the following
  - a) it is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling;
  - b) it has no mode of power of its own; and
  - c) it is dependent for utilities upon a continuous utility linkage to a source originating on shore. (Health & Saf. Code § 18075.55.)
- 2) Establishes the Floating Home Residency Law, which governs the content of floating home lease agreements, allowable fees, marina rules, relations between owners and the marina, grounds for termination, and the procedures associated with transfer of ownership of a floating home, among other things. (Civ. Code §§ 800 *et seq.*)
- 3) Allows marinas, in the absence of a local rent control ordinance or a fixed-term lease, to raise rents whenever they want and as much as they want subject only a requirement to provide at least 30 days advance notice before the date of the increase, and the reason for the increase, including the basis for any calculation used in determining the amount of the increase. (Civ. Code § 800.40.)
- 4) Establishes the Tenant Protection Act of 2019 which applies to specified rental agreements for residential real property and includes the following provisions:
  - a) limits gross rent increases in a 12-month period to the lower of five percent plus the change in the cost of living up to a maximum cap of 10 percent (Civ. Code § 1947.12);
  - b) creates eviction protections which require landlords to have and to state a “just cause” for terminating a tenancy (Civ. Code § 1946.2); and
  - c) exempts certain properties from its provisions, including units built in the last 15 years, tenancies which have not lasted at least 12 months, units subject to a more protective local measure, and single-family homes and condominiums unless owned by a real estate trust or corporation. (Civ. Code §§ 1947.12 and 1946.2.)
- 5) Restricts annual rent increases to three percent plus inflation up to a maximum of five percent in mobilehome parks that are located within and governed by the jurisdictions of two or more incorporated cities. (Civ. Code § 798.30.5.)

This bill:

- 1) Revises the definition of “floating home marina” so that it includes any area where five or more floating home berths are rented, or held out for rent, to accommodate floating homes, but excludes a marina or harbor where all of the following are true:

- a) it is managed by a nonprofit organization, the property, assets, and profits of which may not inure to any individual or group of individuals, but only to another nonprofit organization;
  - b) the rules and regulations of the marina or harbor are set by majority vote of the berthholders thereof; and
  - c) the marina or harbor contains berths for fewer than 25 floating homes.
- 2) Prohibits a marina from raising the gross rental rate for a tenancy in a floating home marina by more than three percent plus inflation up to a maximum of five percent each year.
  - 3) Allows a marina to set the initial rental rate for a new berth tenancy in which no homeowner from the prior tenancy remains in lawful possession of the berth, unless otherwise restricted by local ordinance (vacancy decontrol).
  - 4) Provides that if a floating home is purchased in-place, meaning that it remains docked in the berth, then initial rental rate for the new owner shall be set at the rental rate of the previous tenancy (vacancy control).
  - 5) Exempts the following tenancies from (2) through (4), above:
    - a) floating home berths that are deed-restricted or otherwise subject to affordable housing restrictions, as specified; or
    - b) floating home berths subject to any ordinance, rule, regulation, or initiative measure that restricts annual increases in the rental rate to an amount less than that provided in (2), above
  - 6) Applies retroactively to all rent increases occurring on or after January 1, 2022, but provides that if a marina has increased the rent by more than the amount permissible under (2), above, between January 1, 2022, and January 1, 2023, both of the following shall apply:
    - a) the applicable rent on January 1, 2023, shall be the rent as of January 1, 2022, plus the maximum permissible increase under (2), above; and
    - b) the marina is not liable to a homeowner for any corresponding rent overpayment.
  - 7) Allows a marina that increases the rental rate for a tenancy on or after January 1, 2022, but prior to January 1, 2023, by an amount less than the rental rate increase permitted by (2), above, to increase the rental rate twice within 12 months of January 1, 2022, so long as the increases do not exceed the maximum rental rate increase permitted by (2), above.
  - 8) Provides that any waiver of the rights conferred by the bill is void as contrary to public policy.

- 9) Does not preempt local floating home rent control ordinances that only allow smaller increases than (2), above.
- 10) Contains a sunset provision expiring on January 1, 2030.

### COMMENTS

#### 1. What is a floating home?

As defined by California law, a floating home is a floating structure designed and built to be a stationary waterborne residential dwelling that has no mode of power of its own, depends on a continuous utility linkage to a source onshore, and has a permanent continuous hookup to a shoreside sewage system. (Health & Saf. Code § 18075.55.)

According to the proponents of this bill there are about 500 total floating homes in marinas around the San Francisco Bay Area, including marinas in Alameda, Richmond, and Sausalito. The Harbor Equity Group asserts people living in floating homes are “one of the most economically diverse populations in our region, including many seniors and others living on low and fixed incomes. Floating homes provide some of the only naturally occurring affordable housing for healthcare workers, crafts and trades people, artists and civil servants.”

Typically, the floating homeowner owns the vessel itself and is only renting the berth in which the vessel is docked. Theoretically, the floating home could be disconnected from the marina’s utility and sewer lines and towed away to another berth in another marina. In practice, however this is usually prohibitively expensive or simply impossible to do. Moreover, the proponents of this bill report that there are an extremely limited number of floating home berths available. As the Bay Area Floating Home Association puts it: “[b]ecause there are no more floating home berths, we are sitting ducks, vulnerable to exploitation by an unscrupulous landlord.”

For this reason, floating homes are highly regulated, much like mobilehomes, with whom floating homes share this bifurcated ownership structure. Floating homes, like mobilehomes, have their own special body of law, the Floating Home Residency Law (FHRL), which governs all aspects of living in a marina community and the relationship between marinas and floating homeowners. Curiously, however, apart from requiring the provision of 30 days’ advance notice, the FHRL places no limitation on rent increases in the floating home context.

#### 2. Vulnerabilities of floating homes to berth rent increases

In theory at least, tenants living in houses or apartment on dry land have an option when their landlord raises the rent: they can move elsewhere. Floating homes are different. There is little that a floating homeowner can do if the marina management

decides to raise the rent for the berth. As a result, when it comes to the rent, there is a strong bargaining power imbalance between the marina and a floating home owner.

The proponents of this bill report that some California marinas have taken advantage of this dynamic to dramatically increase berth rents in recent months. As a result, the affected floating homeowners say many of them will no longer be able to afford to stay in their floating homes. This bill is intended to prevent floating home residents from being displaced from their homes in this fashion.

### 3. Restrictions on annual rent increase proposed by this bill

Existing law does not limit how much a marina can increase the rent for a floating home berth each year. By contrast, this bill would restrict annual berth rent increases to three percent plus inflation up to a maximum of five percent per year. A marina could raise the rent up to two times during the year so long as the total increase did not exceed these caps.

Since marinas are not bound by this bill currently, they are free to raise the rent and, anticipating passage of this bill, some may do so. A similar conundrum arose during legislative consideration of the statewide anti-rent gouging law, AB 1482 (Chiu, Ch. 597, Stats. 2019). In that case, the Legislature chose to give the rent caps retroactive effect but, to avoid complex accounting problems and a situation in which landlords might end up owning tenants money, that legislation allowed any rent increases to go into effect while the bill was pending, but made the rent revert to the restricted level upon the operative date of the statute. This bill employs the same device, meaning that on January 1, 2023, all floating home owners' berth rent would revert to what they were charged on January 1, 2022 plus the maximum permissible increase under the bill (which will almost certainly be five percent for this year, given high rates of inflation).

### 4. Vacancy control and its relevance to floating home equity

This bill is modeled on the anti-rent gouging statute that California enacted in 2019 (AB 1482, Chiu, Ch. 597, Stats. 2019.) However, this bill diverges from that model in at least two key ways.

First, AB 1482 limited rent-gouging in California by placing an upper limit on annual rent increases: five percent plus inflation up to a hard cap of 10 percent. (Civ. Code § 1947.12.) This bill is more restrictive: its upper limit on rent increases is three percent plus inflation up to a maximum of five percent. This is in line with the rent increase limitations that this Legislature approved last year for residents of mobilehome parks that straddle two jurisdictions. (AB 978 (Quirk-Silva, Ch. 125, Stats. 2021.)

The other major difference between the existing statewide anti-rent gouging laws and this bill is that the existing laws for land-based tenants provide for vacancy decontrol.

Vacancy decontrol means that whenever a completely new set of tenants moves into a rental unit, the landlord is free to set the initial rental rate at whatever level the market will bear. By contrast, this bill calls for what might be called partial vacancy decontrol. The bill specifies, in effect, that if a berth becomes completely vacant – meaning that the floating home is no longer docked there – then the marina is free to set a new rental rate for that berth. However, if the floating homeowner sells the vessel in-place to a new owner, then vacancy control applies: the marina can only charge the new owner whatever the marina was charging the old owner and any further rent increases have to comply with the rent caps.

The inclusion of this provision is vital from the point of view of the proponents of this bill, many of whom are floating home owners themselves. Vacancy control is especially important to floating home owners because the potential sale price of their vessel – and therefore the equity they have in their home – is directly tied to how much the rent for the berth costs. For example, suppose Sally owns a floating home in a marina. The marina charges her \$1,000 per month to dock her floating home there. Sally is thinking of moving away and David is thinking of buying the floating home from her. He is willing to pay Sally \$100,000 if he will be paying the same amount of rent as Sally did. But if the marina can double the rent for the berth when David moves in, he knows he will be paying an additional \$12,000 each year for his housing. That makes buying Sally's floating home less attractive financially and David is likely to reduce his offer to Sally accordingly. In this way, the marina's ability to charge future residents more cuts down on the value of Sally's home today. As the Mayor of the City of Alameda reports in her letter supporting the bill, this effect has already had an impact on Bay Area floating homeowners:

In one Bay Area marina where berth rents are being doubled, a home fell out of escrow and two others have received no offers because the berth rent is too high. Though this kind of abuse has not yet happened on our side of the Bay, there are no legal protections in place to ensure that it won't. Vacancy control would set a limit on how much a marina owner can increase the berth rent when a floating home sells. This bill would protect homeowners' right to the full equity in their homes.

Viewed from the floating home owners' perspective, preserving equity makes perfect sense. As a policy matter however, it should be noted that preserving the floating home owner's equity comes at the expense of additional rent revenue for the marina. That additional revenue may simply be windfall profit, but it could also be needed for maintenance or desirable for investing in improvements.

5. Constitutional considerations related to rent control

Courts have consistently upheld the power of government to impose rent control so long as the mechanism assures that landlords can achieve a reasonable return on their investment. (*Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761; *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644; *Birkenfeld v. Berkeley* (1976) 17 Cal.3d 129.)

Whether there has ever been a measure applying rent control to floating homes specifically, as this bill would do, is unclear. However, the courts have approved the imposition of rent control measures in the context of mobilehomes which, for the reasons previously discussed in the analysis, share many commonalities with floating homes. (*Carson Mobilehome Park Owners' Ass'n v. City of Carson* (1983) 35 Cal.3d 184.) Both have bifurcated ownership between the dwelling itself and the space in which the dwelling is located.

6. Arguments in support of the bill

According to the author:

Assembly Bill 252 adds rent and vacancy control to the Floating Home Residency Law to protect one of the Bay Area's last sources of affordable housing. The Bay Area's floating home communities (425 in Sausalito, 10 in Richmond, and 42 in Alameda) provide housing for one of the most economically diverse populations in the region, including many seniors and others living on low and fixed incomes. These floating home marinas provide some of the only naturally occurring affordable housing for healthcare workers, crafts and trades people, artists and civil servants. These residents own their homes but rent their berths from marina owners. Currently, there are no state-level protections from excessive rent increases, and there is no place to move a floating home when rents become unaffordable, making floating home owners especially vulnerable. If this is not remedied, residents on low or fixed incomes will be displaced. AB 252 will cap the amount a marina owner can increase berth rent per year to 3% + COLA or 5%, whichever is lower. Berth rent directly affects how much a floating home can sell for or whether it sells at all. Presently, there are no limits on rent increases when a floating home transfers to a new owner, giving marina owners control over both homeowners' equity and the ability to sell their homes. In one Bay Area marina where berth rents are being doubled, a home fell out of escrow and two others have received no offers because the berth rent is too high. Floating home owners can become trapped by rent so high that their homes become unaffordable to live in and impossible to

sell. AB 252 would correct the nearly complete power imbalance between floating homeowners and marina owners. My bill would establish a process to ensure that marina owners can earn a fair return on investment and produce sufficient revenue to cover maintenance and upgrades of their facilities. At the same time it would protect floating homeowners from the threat of unreasonable rent increases that could cause them to lose their homes and/or reduce or eliminate the value of their property.

As sponsor of the bill, Bay Area Floating Homes Association writes:

It is a perilous situation to own your home but not the land (in our case, water) underneath it. It is more perilous still that there is nowhere to go when you can no longer afford the rent. And when the rent goes so high that you cannot afford to stay but you cannot sell, this scary story turns tragic. AB 252 changes that lopsided equation to one where everybody benefits: Marina owners get a fair rate of return and can invest in their properties, floating home owners can stay housed, and California retains a much-needed source of Naturally-Occurring Affordable Housing.

In support, the City of Alameda writes:

Like mobile homeowners, these residents own their homes but rent their berths from Marina owners. Because there are currently no state-level protections from excessive rent increases for floating home berths, floating homeowners are especially vulnerable. There is no place to move a floating home for owners who cannot afford a rent increase or fee hike. If this is not remedied, residents on low or fixed incomes will be displaced.

## 7. Arguments in opposition to the bill

In opposition to the bill, the Marine Recreation Association writes:

[P]roviding that AB 252 applies only to floating homes, floating home marinas and floating home slips, we do not have any issue with it. [...] From a policy perspective, there are approximately 500 floating home slips in the Bay Area and not a single vacancy. [...] Thus, there is no place for floating home owners to go if they are forced out of their slip. We understand why they need protection, as illustrated by the issue Alameda City Council intended to address. In the case of recreational marina slips, there are approximately 17,000 slips in the Bay Area of which about 3,000 are



vacant. Arguably, the Bay Area has among the highest salt water marina vacancy rates in the country and some of the lowest slip and liveaboard rates. Therefore, unlike floating homes/marinas, there is simply no policy need to “protect” recreational boaters, with or without liveaboard privileges.

#### 8. Proposed amendments

In order to address the concern raised in the arguments in opposition, above, the author proposes to incorporate amendments into the bill that would:

- clarify that the bill only applies to floating homes in floating home berths;
- limit the geographic scope of the bill to Alameda, Contra Costa, and Marin counties.

#### SUPPORT

Bay Area Floating Home Association (sponsor)  
Alameda Floating Homes Association  
American Civil Liberties Union – California Action  
Marilyn Ashcraft, Mayor, City of Alameda  
Center for Environmental Health  
Floating Home Association, Inc.  
Harbor Equity Group  
Housing and Economic Rights Advocates  
Janelle Kellman, Mayor, City of Sausalito

#### OPPOSITION

Marine Recreation Association

#### RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 978 (Quirk-Silva, Ch. 125, Stats. 2021) restricted mobilehome parks located in, and governed by, more than one incorporated city from increasing the space rent that mobilehome owners must pay by more than three percent plus inflation, up to a maximum cap of five percent, annually. The bill also extended to tenants renting park-owned mobilehomes the same protections against arbitrary eviction and rent-gouging that tenants in other types of residential rental housing possess.

AB 3088 (Chiu, Ch. 37, Stats. 2020) among other things, made technical and clarifying modifications to the statewide just cause for eviction and anti-rent gouging laws enacted last year pursuant to AB 1482, below. Specifically, the bill: (1) laid out how inflation should be calculated when determining permissible rent increases; (2) clarified

application of the law to properties containing two housing units; (3) aligned definitions; (4) corrected erroneous cross-references; and (5) clarified the scope of laws with which a housing provider must demonstrate compliance before establishing new rental rates after the expiration of affordability covenants.

AB 1482 (Chiu, Ch. 597, Stats. 2019) limited rent-gouging in California by placing an upper limit on annual rent increases: five percent plus inflation up to a hard cap of 10 percent. To prevent landlords from engaging in rent-gouging by evicting tenants, the bill also required that a landlord have and state a just cause, as specified, in order to evict tenants who have occupied the premises for more than 12 months. Both the rent cap and the just cause provisions are subject to exemptions including, among others: housing built in the past 15 years and single family residences unless owned by a real estate trust or a corporation. AB 1482 sunsets after ten years and does not preempt any local rent control ordinances.

AB 3139 (Filante, Ch. 1505, Stats. 1990) established the Floating Home Residency Law.

**PRIOR VOTES:**

As this bill was gutted and amended on June 14, 2022, all prior votes are irrelevant.

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