

JAN 17 2008

A BILL FOR AN ACT

RELATING TO RESIDENTIAL LANDLORD-TENANT CODE.

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

1 SECTION 1. Chapter 521, Hawaii Revised Statutes, is
2 amended by adding a new section to part II to be appropriately
3 designated and to read as follows:

4 "§521- Power of counties; rent regulation. (a) This
5 chapter shall not be deemed to prevent a county with respect to
6 the rent for dwelling apartment buildings within the county,
7 from enacting by ordinance a rent regulation law for the sole
8 purpose of limiting the maximum amount of monthly rent and the
9 rate of rent increase.

10 (b) A county may establish by ordinance an administrative
11 board or similar entity for the purpose of administering and
12 enforcing rent regulation under subsection (a).

13 (c) County rent regulation shall not apply to rents for
14 public assistance recipients."

15 SECTION 2. Section 46-1.5, Hawaii Revised Statutes, is
16 amended to read as follows:



1 "§46-1.5 General powers and limitation of the counties.

2 Subject to general law, each county shall have the following
3 powers and shall be subject to the following liabilities and
4 limitations:

- 5 (1) Each county shall have the power to frame and adopt a
6 charter for its own self-government that shall
7 establish the county executive, administrative, and
8 legislative structure and organization, including but
9 not limited to the method of appointment or election
10 of officials, their duties, responsibilities, and
11 compensation, and the terms of their office;
- 12 (2) Each county shall have the power to provide for and
13 regulate the marking and lighting of all buildings and
14 other structures that may be obstructions or hazards
15 to aerial navigation, so far as may be necessary or
16 proper for the protection and safeguarding of life,
17 health, and property;
- 18 (3) Each county shall have the power to enforce all claims
19 on behalf of the county and approve all lawful claims
20 against the county, but shall be prohibited from
21 entering into, granting, or making in any manner any
22 contract, authorization, allowance payment, or



1 liability contrary to the provisions of any county
2 charter or general law;

3 (4) Each county shall have the power to make contracts and
4 to do all things necessary and proper to carry into
5 execution all powers vested in the county or any
6 county officer;

7 (5) Each county shall have the power to:

8 (A) Maintain channels, whether natural or artificial,
9 including their exits to the ocean, in suitable
10 condition to carry off storm waters;

11 (B) Remove from the channels, and from the shores and
12 beaches, any debris that is likely to create an
13 unsanitary condition or become a public nuisance;
14 provided that, to the extent any of the foregoing
15 work is a private responsibility, the
16 responsibility may be enforced by the county in
17 lieu of the work being done at public expense;

18 (C) Construct, acquire by gift, purchase, or by the
19 exercise of eminent domain, reconstruct, improve,
20 better, extend, and maintain projects or
21 undertakings for the control of and protection
22 against floods and flood waters, including the



- 1 power to drain and rehabilitate lands already
2 flooded; and
- 3 (D) Enact zoning ordinances providing that lands
4 deemed subject to seasonable, periodic, or
5 occasional flooding shall not be used for
6 residence or other purposes in a manner as to
7 endanger the health or safety of the occupants
8 thereof, as required by the Federal Flood
9 Insurance Act of 1956 (chapter 1025, Public Law
10 1016);
- 11 (6) Each county shall have the power to exercise the power
12 of condemnation by eminent domain when it is in the
13 public interest to do so;
- 14 (7) Each county shall have the power to exercise
15 regulatory powers over business activity as are
16 assigned to them by chapter 445 or other general law;
- 17 (8) Each county shall have the power to fix the fees and
18 charges for all official services not otherwise
19 provided for;
- 20 (9) Each county shall have the power to provide by
21 ordinance assessments for the improvement or
22 maintenance of districts within the county;



- 1 (10) Except as otherwise provided, no county shall have the
2 power to give or loan credit to, or in aid of, any
3 person or corporation, directly or indirectly, except
4 for a public purpose;
- 5 (11) Where not within the jurisdiction of the public
6 utilities commission, each county shall have the power
7 to regulate by ordinance the operation of motor
8 vehicle common carriers transporting passengers within
9 the county and adopt and amend rules the county deems
10 necessary for the public convenience and necessity;
- 11 (12) Each county shall have the power to enact and enforce
12 ordinances necessary to prevent or summarily remove
13 public nuisances and to compel the clearing or removal
14 of any public nuisance, refuse, and uncultivated
15 undergrowth from streets, sidewalks, public places,
16 and unoccupied lots. In connection with these powers,
17 each county may impose and enforce liens upon the
18 property for the cost to the county of removing and
19 completing the necessary work where the property
20 owners fail, after reasonable notice, to comply with
21 the ordinances. The authority provided by this
22 paragraph shall not be self-executing, but shall



1 become fully effective within a county only upon the
2 enactment or adoption by the county of appropriate and
3 particular laws, ordinances, or rules defining "public
4 nuisances" with respect to each county's respective
5 circumstances. The counties shall provide the
6 property owner with the opportunity to contest the
7 summary action and to recover the owner's property;

8 (13) Each county shall have the power to enact ordinances
9 deemed necessary to protect health, life, and
10 property, and to preserve the order and security of
11 the county and its inhabitants on any subject or
12 matter not inconsistent with, or tending to defeat,
13 the intent of any state statute where the statute does
14 not disclose an express or implied intent that the
15 statute shall be exclusive or uniform throughout the
16 State;

17 (14) Each county shall have the power to:

18 (A) Make and enforce within the limits of the county

19 all necessary ordinances covering all:

20 (i) Local police matters;

21 (ii) Matters of sanitation;

22 (iii) Matters of inspection of buildings;



- 1 (iv) Matters of condemnation of unsafe
2 structures, plumbing, sewers, dairies, milk,
3 fish, and morgues; [~~and~~]
- 4 (v) Matters of the collection and disposition of
5 rubbish and garbage; and
- 6 (vi) Matters of rent regulation as provided in
7 section 521- ;
- 8 (B) Provide exemptions for homeless facilities and
9 any other program for the homeless authorized by
10 chapter 356D, for all matters under this
11 paragraph;
- 12 (C) Appoint county physicians and sanitary and other
13 inspectors as necessary to carry into effect
14 ordinances made under this paragraph, who shall
15 have the same power as given by law to agents of
16 the department of health, subject only to
17 limitations placed on them by the terms and
18 conditions of their appointments; and
- 19 (D) Fix a penalty for the violation of any ordinance,
20 which penalty may be a misdemeanor, petty
21 misdemeanor, or violation as defined by general
22 law;



1 (15) Each county shall have the power to provide public
2 pounds; to regulate the impounding of stray animals
3 and fowl, and their disposition; and to provide for
4 the appointment, powers, duties, and fees of animal
5 control officers;

6 (16) Each county shall have the power to purchase and
7 otherwise acquire, lease, and hold real and personal
8 property within the defined boundaries of the county
9 and to dispose of the real and personal property as
10 the interests of the inhabitants of the county may
11 require, except that:

12 (A) Any property held for school purposes may not be
13 disposed of without the consent of the
14 superintendent of education;

15 (B) No property bordering the ocean shall be sold or
16 otherwise disposed of; and

17 (C) All proceeds from the sale of park lands shall be
18 expended only for the acquisition of property for
19 park or recreational purposes;

20 (17) Each county shall have the power to provide by charter
21 for the prosecution of all offenses and to prosecute



1 for offenses against the laws of the State under the
2 authority of the attorney general of the State;

3 (18) Each county shall have the power to make
4 appropriations in amounts deemed appropriate from any
5 moneys in the treasury, for the purpose of:

6 (A) Community promotion and public celebrations;

7 (B) The entertainment of distinguished persons as may
8 from time to time visit the county;

9 (C) The entertainment of other distinguished persons,
10 as well as, public officials when deemed to be in
11 the best interest of the community; and

12 (D) The rendering of civic tribute to individuals
13 who, by virtue of their accomplishments and
14 community service, merit civic commendations,
15 recognition, or remembrance;

16 (19) Each county shall have the power to:

17 (A) Construct, purchase, take on lease, lease,
18 sublease, or in any other manner acquire, manage,
19 maintain, or dispose of buildings for county
20 purposes, sewers, sewer systems, pumping
21 stations, waterworks, including reservoirs,
22 wells, pipelines, and other conduits for



- 1 distributing water to the public, lighting
2 plants, and apparatus and appliances for lighting
3 streets and public buildings, and manage,
4 regulate, and control the same;
- 5 (B) Regulate and control the location and quality of
6 all appliances necessary to the furnishing of
7 water, heat, light, power, telephone, and
8 telecommunications service to the county;
- 9 (C) Acquire, regulate, and control any and all
10 appliances for the sprinkling and cleaning of the
11 streets and the public ways, and for flushing the
12 sewers; and
- 13 (D) Open, close, construct, or maintain county
14 highways or charge toll on county highways;
15 provided that all revenues received from a toll
16 charge shall be used for the construction or
17 maintenance of county highways;
- 18 (20) Each county shall have the power to regulate the
19 renting, subletting, and rental conditions of property
20 for places of abode by ordinance;
- 21 (21) Unless otherwise provided by law, each county shall
22 have the power to establish by ordinance the order of



1 succession of county officials in the event of a
2 military or civil disaster;

3 (22) Each county shall have the power to sue and be sued in
4 its corporate name;

5 (23) Each county shall have the power to establish and
6 maintain waterworks and sewer works; to collect rates
7 for water supplied to consumers and for the use of
8 sewers; to install water meters whenever deemed
9 expedient; provided that owners of premises having
10 vested water rights under existing laws appurtenant to
11 the premises shall not be charged for the installation
12 or use of the water meters on the premises; to take
13 over from the State existing waterworks systems,
14 including water rights, pipelines, and other
15 appurtenances belonging thereto, and sewer systems,
16 and to enlarge, develop, and improve the same;

17 (24) (A) Each county may impose civil fines, in addition
18 to criminal penalties, for any violation of
19 county ordinances or rules after reasonable
20 notice and requests to correct or cease the
21 violation have been made upon the violator. Any
22 administratively imposed civil fine shall not be



1 collected until after an opportunity for a
2 hearing under chapter 91. Any appeal shall be
3 filed within thirty days from the date of the
4 final written decision. These proceedings shall
5 not be a prerequisite for any civil fine or
6 injunctive relief ordered by the circuit court;

7 (B) Each county by ordinance may provide for the
8 addition of any unpaid civil fines, ordered by
9 any court of competent jurisdiction, to any
10 taxes, fees, or charges, with the exception of
11 fees or charges for water for residential use and
12 sewer charges, collected by the county. Each
13 county by ordinance may also provide for the
14 addition of any unpaid administratively imposed
15 civil fines, which remain due after all judicial
16 review rights under section 91-14 are exhausted,
17 to any taxes, fees, or charges, with the
18 exception of water for residential use and sewer
19 charges, collected by the county. The ordinance
20 shall specify the administrative procedures for
21 the addition of the unpaid civil fines to the
22 eligible taxes, fees, or charges and may require



1 hearings or other proceedings. After addition of
2 the unpaid civil fines to the taxes, fees, or
3 charges, the unpaid civil fines shall not become
4 a part of any taxes, fees, or charges. The
5 county by ordinance may condition the issuance or
6 renewal of a license, approval, or permit for
7 which a fee or charge is assessed, except for
8 water for residential use and sewer charges, on
9 payment of the unpaid civil fines. Upon
10 recordation of a notice of unpaid civil fines in
11 the bureau of conveyances, the amount of the
12 civil fines, including any increase in the amount
13 of the fine which the county may assess, shall
14 constitute a lien upon all real property or
15 rights to real property belonging to any person
16 liable for the unpaid civil fines. The lien in
17 favor of the county shall be subordinate to any
18 lien in favor of any person recorded or
19 registered prior to the recordation of the notice
20 of unpaid civil fines and senior to any lien
21 recorded or registered after the recordation of
22 the notice. The lien shall continue until the



1 unpaid civil fines are paid in full or until a
2 certificate of release or partial release of the
3 lien, prepared by the county at the owner's
4 expense, is recorded. The notice of unpaid civil
5 fines shall state the amount of the fine as of
6 the date of the notice and maximum permissible
7 daily increase of the fine. The county shall not
8 be required to include a social security number,
9 state general excise taxpayer identification
10 number, or federal employer identification number
11 on the notice. Recordation of the notice in the
12 bureau of conveyances shall be deemed, at such
13 time, for all purposes and without any further
14 action, to procure a lien on land registered in
15 land court under chapter 501. After the unpaid
16 civil fines are added to the taxes, fees, or
17 charges as specified by county ordinance, the
18 unpaid civil fines shall be deemed immediately
19 due, owing, and delinquent and may be collected
20 in any lawful manner. The procedure for
21 collection of unpaid civil fines authorized in
22 this paragraph shall be in addition to any other



1 procedures for collection available to the State
2 and county by law or rules of the courts;
3 (C) Each county may impose civil fines upon any
4 person who places graffiti on any real or
5 personal property owned, managed, or maintained
6 by the county. The fine may be up to \$1,000 or
7 may be equal to the actual cost of having the
8 damaged property repaired or replaced. The
9 parent or guardian having custody of a minor who
10 places graffiti on any real or personal property
11 owned, managed, or maintained by the county shall
12 be jointly and severally liable with the minor
13 for any civil fines imposed hereunder. Any such
14 fine may be administratively imposed after an
15 opportunity for a hearing under chapter 91, but
16 such a proceeding shall not be a prerequisite for
17 any civil fine ordered by any court. As used in
18 this subparagraph, "graffiti" means any
19 unauthorized drawing, inscription, figure, or
20 mark of any type intentionally created by paint,
21 ink, chalk, dye, or similar substances;



- 1 (D) At the completion of an appeal in which the
2 county's enforcement action is affirmed and upon
3 correction of the violation if requested by the
4 violation, the case shall be reviewed by the
5 county agency that imposed the civil fines to
6 determine the appropriateness of the amount of
7 the civil fines that accrued while the appeal
8 proceedings were pending. In its review of the
9 amount of the accrued fines, the county agency
10 may consider:
- 11 (i) The nature and egregiousness of the
 - 12 violation;
 - 13 (ii) The duration of the violation;
 - 14 (iii) The number of recurring and other similar
 - 15 violations;
 - 16 (iv) Any effort taken by the violator to correct
 - 17 the violation;
 - 18 (v) The degree of involvement in causing or
 - 19 continuing the violation;
 - 20 (vi) Reasons for any delay in the completion of
 - 21 the appeal; and
 - 22 (vii) Other extenuating circumstances.



1 The civil fine that is imposed by administrative
2 order after this review is completed and the
3 violation is corrected shall be subject to
4 judicial review, notwithstanding any provisions
5 for administrative review in county charters;
6 (E) After completion of a review of the amount of
7 accrued civil fine by the county agency that
8 imposed the fine, the amount of the civil fine
9 determined appropriate, including both the
10 initial civil fine and any accrued daily civil
11 fine, shall immediately become due and
12 collectible following reasonable notice to the
13 violator. If no review of the accrued civil fine
14 is requested, the amount of the civil fine, not
15 to exceed the total accrual of civil fine prior
16 to correcting the violation, shall immediately
17 become due and collectible following reasonable
18 notice to the violator, at the completion of all
19 appeal proceedings;
20 (F) If no county agency exists to conduct appeal
21 proceedings for a particular civil fine action
22 taken by the county, then one shall be



1 established by ordinance before the county shall
2 impose the civil fine;

3 (25) Any law to the contrary notwithstanding, any county
4 mayor may exempt by executive order donors, provider
5 agencies, homeless facilities, and any other program
6 for the homeless under chapter 356D from real property
7 taxes, water and sewer development fees, rates
8 collected for water supplied to consumers and for use
9 of sewers, and any other county taxes, charges, or
10 fees; provided that any county may enact ordinances to
11 regulate and grant the exemptions granted by this
12 paragraph;

13 (26) Any county may establish a captive insurance company
14 pursuant to article 19, chapter 431; and

15 (27) Each county shall have the power to enact and enforce
16 ordinances regulating towing operations."

17 SECTION 3. Section 521-21, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 " (a) The landlord and tenant may agree to any
20 consideration, not otherwise prohibited by law, and consistent
21 with a county's rent regulation ordinance, if any, as rent. In
22 the absence of such agreement, and subject to section 521-71(e)



1 in the case of holdover tenants, the tenant shall pay to the
2 landlord the fair rental value for the dwelling unit."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

6

INTRODUCED BY: *Shianne Chun Calland*



Report Title:

Landlord-Tenant Code; Rent Control; Counties

Description:

Allows counties to enact an ordinance to regulate the amount of rent increase for residential apartment buildings.

