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# A BILL FOR AN ACT

RELATING TO STORMWATER FEES.

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

1           SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§46-1.5 General powers and limitation of the  
4 counties. Subject to general law, each county shall have the  
5 following powers and shall be subject to the following  
6 liabilities and limitations:

7           (1) Each county shall have the power to frame and adopt a  
8 charter for its own self-government that shall  
9 establish the county executive, administrative, and  
10 legislative structure and organization, including but  
11 not limited to the method of appointment or election  
12 of officials, their duties, responsibilities, and  
13 compensation, and the terms of their office;

14           (2) Each county shall have the power to provide for and  
15 regulate the marking and lighting of all buildings and  
16 other structures that may be obstructions or hazards  
17 to aerial navigation, so far as may be necessary or

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1           proper for the protection and safeguarding of life,  
2           health, and property;

3           (3) Each county shall have the power to enforce all claims  
4           on behalf of the county and approve all lawful claims  
5           against the county, but shall be prohibited from  
6           entering into, granting, or making in any manner any  
7           contract, authorization, allowance payment, or  
8           liability contrary to the provisions of any county  
9           charter or general law;

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

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

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

18           (B) Remove from the channels, and from the shores and  
19           beaches, any debris that is likely to create an  
20           unsanitary condition or become a public nuisance;  
21           provided that, to the extent any of the foregoing  
22           work is a private responsibility, the

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1 responsibility may be enforced by the county in  
2 lieu of the work being done at public expense;

3 (C) Construct, acquire by gift, purchase, or by the  
4 exercise of eminent domain, reconstruct, improve,  
5 better, extend, and maintain projects or  
6 undertakings for the control of and protection  
7 against floods and flood waters, including the  
8 power to drain and rehabilitate lands already  
9 flooded;

10 (D) Enact zoning ordinances providing that lands  
11 deemed subject to seasonable, periodic, or  
12 occasional flooding shall not be used for  
13 residence or other purposes in a manner as to  
14 endanger the health or safety of the occupants  
15 thereof, as required by the Federal Flood  
16 Insurance Act of 1956 (chapter 1025, Public Law  
17 1016); and

18 (E) Establish and charge user fees to create and  
19 maintain any stormwater management system or  
20 infrastructure; provided that no such user fee  
21 shall be charged or payable to a county by any of  
22 the State's departments that are responsible for

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1           the maintenance and operation of a stormwater  
2           management system that connects or otherwise  
3           intersects with a county stormwater management  
4           system or infrastructure; and provided further  
5           that no services shall be denied to such State  
6           departments by reason of nonpayment of such fees;

7           (6) Each county shall have the power to exercise the power  
8           of condemnation by eminent domain when it is in the  
9           public interest to do so;

10          (7) Each county shall have the power to exercise  
11          regulatory powers over business activity as are  
12          assigned to them by chapter 445 or other general law;

13          (8) Each county shall have the power to fix the fees and  
14          charges for all official services not otherwise  
15          provided for;

16          (9) Each county shall have the power to provide by  
17          ordinance assessments for the improvement or  
18          maintenance of districts within the county;

19          (10) Except as otherwise provided, no county shall have the  
20          power to give or loan credit to, or in aid of, any  
21          person or corporation, directly or indirectly, except  
22          for a public purpose;

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- 1           (11) Where not within the jurisdiction of the public  
2           utilities commission, each county shall have the power  
3           to regulate by ordinance the operation of motor  
4           vehicle common carriers transporting passengers within  
5           the county and adopt and amend rules the county deems  
6           necessary for the public convenience and necessity;
- 7           (12) Each county shall have the power to enact and enforce  
8           ordinances necessary to prevent or summarily remove  
9           public nuisances and to compel the clearing or removal  
10          of any public nuisance, refuse, and uncultivated  
11          undergrowth from streets, sidewalks, public places,  
12          and unoccupied lots. In connection with these powers,  
13          each county may impose and enforce liens upon the  
14          property for the cost to the county of removing and  
15          completing the necessary work where the property  
16          owners fail, after reasonable notice, to comply with  
17          the ordinances. The authority provided by this  
18          paragraph shall not be self-executing, but shall  
19          become fully effective within a county only upon the  
20          enactment or adoption by the county of appropriate and  
21          particular laws, ordinances, or rules defining "public  
22          nuisances" with respect to each county's respective

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- 1           circumstances. The counties shall provide the  
2           property owner with the opportunity to contest the  
3           summary action and to recover the owner's property;
- 4       (13) Each county shall have the power to enact ordinances  
5           deemed necessary to protect health, life, and  
6           property, and to preserve the order and security of  
7           the county and its inhabitants on any subject or  
8           matter not inconsistent with, or tending to defeat,  
9           the intent of any state statute where the statute does  
10          not disclose an express or implied intent that the  
11          statute shall be exclusive or uniform throughout the  
12          State;
- 13       (14) Each county shall have the power to:
- 14           (A) Make and enforce within the limits of the county  
15               all necessary ordinances covering all:
- 16               (i) Local police matters;
- 17               (ii) Matters of sanitation;
- 18               (iii) Matters of inspection of buildings;
- 19               (iv) Matters of condemnation of unsafe  
20               structures, plumbing, sewers, dairies, milk,  
21               fish, and morgues; and

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1 (v) Matters of the collection and disposition of  
2 rubbish and garbage;

3 (B) Provide exemptions for homeless facilities and  
4 any other program for the homeless authorized by  
5 part XVII of chapter 346, for all matters under  
6 this paragraph;

7 (C) Appoint county physicians and sanitary and other  
8 inspectors as necessary to carry into effect  
9 ordinances made under this paragraph, who shall  
10 have the same power as given by law to agents of  
11 the department of health, subject only to  
12 limitations placed on them by the terms and  
13 conditions of their appointments; and

14 (D) Fix a penalty for the violation of any ordinance,  
15 which penalty may be a misdemeanor, petty  
16 misdemeanor, or violation as defined by general  
17 law;

18 (15) Each county shall have the power to provide public  
19 pounds; to regulate the impounding of stray animals  
20 and fowl, and their disposition; and to provide for  
21 the appointment, powers, duties, and fees of animal  
22 control officers;

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- 1           (16) Each county shall have the power to purchase and  
2                   otherwise acquire, lease, and hold real and personal  
3                   property within the defined boundaries of the county  
4                   and to dispose of the real and personal property as  
5                   the interests of the inhabitants of the county may  
6                   require, except that:
- 7                   (A) Any property held for school purposes may not be  
8                               disposed of without the consent of the  
9                               superintendent of education;
- 10                  (B) No property bordering the ocean shall be sold or  
11                               otherwise disposed of; and
- 12                  (C) All proceeds from the sale of park lands shall be  
13                               expended only for the acquisition of property for  
14                               park or recreational purposes;
- 15           (17) Each county shall have the power to provide by charter  
16                   for the prosecution of all offenses and to prosecute  
17                   for offenses against the laws of the State under the  
18                   authority of the attorney general of the State;
- 19           (18) Each county shall have the power to make  
20                   appropriations in amounts deemed appropriate from any  
21                   moneys in the treasury, for the purpose of:
- 22                   (A) Community promotion and public celebrations;

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

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

6 (D) The rendering of civic tribute to individuals  
7 who, by virtue of their accomplishments and  
8 community service, merit civic commendations,  
9 recognition, or remembrance;

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

11 (A) Construct, purchase, take on lease, lease,  
12 sublease, or in any other manner acquire, manage,  
13 maintain, or dispose of buildings for county  
14 purposes, sewers, sewer systems, pumping  
15 stations, waterworks, including reservoirs,  
16 wells, pipelines, and other conduits for  
17 distributing water to the public, lighting  
18 plants, and apparatus and appliances for lighting  
19 streets and public buildings, and manage,  
20 regulate, and control the same;

21 (B) Regulate and control the location and quality of  
22 all appliances necessary to the furnishing of

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- 1 water, heat, light, power, telephone, and  
2 telecommunications service to the county;
- 3 (C) Acquire, regulate, and control any and all  
4 appliances for the sprinkling and cleaning of the  
5 streets and the public ways, and for flushing the  
6 sewers; and
- 7 (D) Open, close, construct, or maintain county  
8 highways or charge toll on county highways;  
9 provided that all revenues received from a toll  
10 charge shall be used for the construction or  
11 maintenance of county highways;
- 12 (20) Each county shall have the power to regulate the  
13 renting, subletting, and rental conditions of property  
14 for places of abode by ordinance;
- 15 (21) Unless otherwise provided by law, each county shall  
16 have the power to establish by ordinance the order of  
17 succession of county officials in the event of a  
18 military or civil disaster;
- 19 (22) Each county shall have the power to sue and be sued in  
20 its corporate name;
- 21 (23) Each county shall have the power to:

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- 1 (A) Establish and maintain waterworks and sewer  
2 works;
- 3 (B) Implement a sewer monitoring program that  
4 includes the inspection of sewer laterals that  
5 connect to county sewers, when those laterals are  
6 located on public or private property, after  
7 providing a property owner not less than ten  
8 calendar days' written notice, to detect leaks  
9 from laterals, infiltration, and inflow, any  
10 other law to the contrary notwithstanding;
- 11 (C) Compel an owner of private property upon which is  
12 located any sewer lateral that connects to a  
13 county sewer to inspect that lateral for leaks,  
14 infiltration, and inflow and to perform repairs  
15 as necessary;
- 16 (D) Collect rates for water supplied to consumers and  
17 for the use of sewers;
- 18 (E) Install water meters whenever deemed expedient;  
19 provided that owners of premises having vested  
20 water rights under existing laws appurtenant to  
21 the premises shall not be charged for the

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1 installation or use of the water meters on the  
2 premises; and

3 (F) Take over from the State existing waterworks  
4 systems, including water rights, pipelines, and  
5 other appurtenances belonging thereto, and sewer  
6 systems, and to enlarge, develop, and improve the  
7 same;

8 (G) For purposes of subparagraphs (B) and (C):

9 (i) "Infiltration" means groundwater, rainwater,  
10 and saltwater that enters the county sewer  
11 system through cracked, broken, or defective  
12 sewer laterals; and

13 (ii) "Inflow" means non-sewage entering the  
14 county sewer system via inappropriate or  
15 illegal connections;

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

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1 hearing under chapter 91. Any appeal shall be  
2 filed within thirty days from the date of the  
3 final written decision. These proceedings shall  
4 not be a prerequisite for any civil fine or  
5 injunctive relief ordered by the circuit court;  
6 (B) Each county by ordinance may provide for the  
7 addition of any unpaid civil fines, ordered by  
8 any court of competent jurisdiction, to any  
9 taxes, fees, or charges, with the exception of  
10 fees or charges for water for residential use and  
11 sewer charges, collected by the county. Each  
12 county by ordinance may also provide for the  
13 addition of any unpaid administratively imposed  
14 civil fines, which remain due after all judicial  
15 review rights under section 91-14 are exhausted,  
16 to any taxes, fees, or charges, with the  
17 exception of water for residential use and sewer  
18 charges, collected by the county. The ordinance  
19 shall specify the administrative procedures for  
20 the addition of the unpaid civil fines to the  
21 eligible taxes, fees, or charges and may require  
22 hearings or other proceedings. After addition of

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

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

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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;

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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 violator, 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.

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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; and

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

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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, by executive order, may exempt donors, provider  
5            agencies, homeless facilities, and any other program  
6            for the homeless under part XVII of chapter 346 from  
7            real property taxes, water and sewer development fees,  
8            rates collected for water supplied to consumers and  
9            for use of sewers, and any other county taxes,  
10           charges, or fees; provided that any county may enact  
11           ordinances to regulate and grant the exemptions  
12           granted by this 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 2. New statutory material is underscored.

18           SECTION 3. This Act shall take effect upon its approval.

19

20

INTRODUCED BY: 

21

BY REQUEST

# S.B. NO. 1399

**Report Title:**

Stormwater Fees; State Exemption

**Description:**

Exempts the State and its departments and agencies that maintain or operate a stormwater management system that is interconnected to a county stormwater system from county stormwater user fees. Prohibits each county from denying services to the State or its departments or agencies by reason of nonpayment of user fees.

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

# SB. NO. 1399

## JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO STORMWATER FEES.

PURPOSE: To exempt State departments that maintain and operate stormwater management systems from county stormwater user fees and to prohibit a county from denying services to any such State department by reason of nonpayment of user fees.

MEANS: Amend section 46-1.5, Hawaii Revised Statutes.

JUSTIFICATION: Several State departments are responsible for the management of stormwater management systems that connect to a municipal county system; in these cases, these departments should be exempt from paying and being charged for use of the municipal county stormwater management system. For example, the Department of Transportation (Department) is engaged with the protection and prudent management of the State water resources with stormwater management and recognizes that biological and chemical pollutants carried by stormwaters drain into the Department's ports and basins. The Department also has Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System Permits for its own drainage systems and comprehensive stormwater management programs to address permit requirements and reduce pollutant discharges to the maximum extent practical. The City and County of Honolulu (CCH) stormwater management system is connected to and uses the Department's systems without charge by or consideration due to the State such that user fees should not be charged to the Department when the Department's stormwater management system

connects to the CCH stormwater management system.

Impact on the public: None

Impact on the department and other agencies:  
The exemption will avoid an increase in the operating expenses of the Department which, in the case of the Harbors Division, are ultimately borne by harbor users, including shipping companies.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: TRN-395.

OTHER AFFECTED  
AGENCIES: All counties.

EFFECTIVE DATE: Upon approval.