

JAN 20 2023

A BILL FOR AN ACT

RELATING TO COUNTY ORDINANCES.

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

1 SECTION 1. The legislature finds that residents often
2 complain of "eyesore" properties -- sorely unmaintained
3 properties that may be occupied, unoccupied, or illegally
4 occupied. Much more than just an eyesore, these properties can
5 contain physical hazards through lack of maintenance that create
6 a danger to occupants. Manners of storage of items may cause
7 fire hazards and environments for disease-carrying pests.
8 Properties may also shelter squatters engaged in illegal
9 activities. While counties can issue citations for violations,
10 fines can go unpaid and issues can remain unaddressed.
11 Meanwhile, the government is legally unable to enter private
12 property to intervene without the property owner's permission.

13 The purpose of this Act is to authorize the counties, after
14 adoption of an ordinance, to sell private property after all
15 notices, orders, and appeal proceedings are exhausted and to use
16 those revenues to pay unpaid civil fines related to that
17 property.



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

3 **"§46-1.5 General powers and limitation of the counties.**

4 Subject to general law, each county shall have the following
5 powers and shall be subject to the following liabilities and
6 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
18 proper for the protection and safeguarding of life,
19 health, and property;

20 (3) Each county shall have the power to enforce all claims
21 on behalf of the county and approve all lawful claims



1 against the county, but shall be prohibited from
2 entering into, granting, or making in any manner any
3 contract, authorization, allowance payment, or
4 liability contrary to the provisions of any county
5 charter or general law;

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

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

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

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



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

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

16 (E) Establish and charge user fees to create and
17 maintain any stormwater management system or
18 infrastructure;

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



- 1 (7) Each county shall have the power to exercise
2 regulatory powers over business activity as are
3 assigned to them by chapter 445 or other general law;
- 4 (8) Each county shall have the power to fix the fees and
5 charges for all official services not otherwise
6 provided for;
- 7 (9) Each county shall have the power to provide by
8 ordinance assessments for the improvement or
9 maintenance of districts within the county;
- 10 (10) Except as otherwise provided, no county shall have the
11 power to give or loan credit to, or in aid of, any
12 person or corporation, directly or indirectly, except
13 for a public purpose;
- 14 (11) Where not within the jurisdiction of the public
15 utilities commission, each county shall have the power
16 to regulate by ordinance the operation of motor
17 vehicle common carriers transporting passengers within
18 the county and adopt and amend rules the county deems
19 necessary for the public convenience and necessity;
- 20 (12) Each county shall have the power to enact and enforce
21 ordinances necessary to prevent or summarily remove



1 public nuisances and to compel the clearing or removal
2 of any public nuisance, refuse, and uncultivated
3 undergrowth from streets, sidewalks, public places,
4 and unoccupied lots. In connection with these powers,
5 each county may impose and enforce liens upon the
6 property for the cost to the county of removing and
7 completing the necessary work where the property
8 owners fail, after reasonable notice, to comply with
9 the ordinances. The authority provided by this
10 paragraph shall not be self-executing, but shall
11 become fully effective within a county only upon the
12 enactment or adoption by the county of appropriate and
13 particular laws, ordinances, or rules defining "public
14 nuisances" with respect to each county's respective
15 circumstances. The counties shall provide the
16 property owner with the opportunity to contest the
17 summary action and to recover the owner's property;
18 provided that a county may proceed with a power of
19 sale of the property after all notices, orders, and
20 appeal proceedings are exhausted;



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

10 (14) Each county shall have the power to:
11 (A) Make and enforce within the limits of the county
12 all necessary ordinances covering all:
13 (i) Local police matters;
14 (ii) Matters of sanitation;
15 (iii) Matters of inspection of buildings;
16 (iv) Matters of condemnation of unsafe
17 structures, plumbing, sewers, dairies, milk,
18 fish, and morgues; and
19 (v) Matters of the collection and disposition of
20 rubbish and garbage;



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

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

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

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



- 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:



- 1 (A) Community promotion and public celebrations;
- 2 (B) The entertainment of distinguished persons as may
- 3 from time to time visit the county;
- 4 (C) The entertainment of other distinguished persons,
- 5 as well as, public officials when deemed to be in
- 6 the best interest of the community; and
- 7 (D) The rendering of civic tribute to individuals
- 8 who, by virtue of their accomplishments and
- 9 community service, merit civic commendations,
- 10 recognition, or remembrance;
- 11 (19) Each county shall have the power to:
- 12 (A) Construct, purchase, take on lease, lease,
- 13 sublease; or in any other manner acquire, manage,
- 14 maintain, or dispose of buildings for county
- 15 purposes, sewers, sewer systems, pumping
- 16 stations, waterworks, including reservoirs,
- 17 wells, pipelines, and other conduits for
- 18 distributing water to the public, lighting
- 19 plants, and apparatus and appliances for lighting
- 20 streets and public buildings, and manage,
- 21 regulate, and control the same;



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



- 1 (22) Each county shall have the power to sue and be sued in
2 its corporate name;
- 3 (23) Each county shall have the power to:
- 4 (A) Establish and maintain waterworks and sewer
5 works;
- 6 (B) Implement a sewer monitoring program that
7 includes the inspection of sewer laterals that
8 connect to county sewers, when those laterals are
9 located on public or private property, after
10 providing a property owner not less than ten
11 calendar days' written notice, to detect leaks
12 from laterals, infiltration, and inflow, any
13 other law to the contrary notwithstanding;
- 14 (C) Compel an owner of private property upon which is
15 located any sewer lateral that connects to a
16 county sewer to inspect that lateral for leaks,
17 infiltration, and inflow and to perform repairs
18 as necessary;
- 19 (D) Collect rates for water supplied to consumers and
20 for the use of sewers;



- 1 (E) Install water meters whenever deemed expedient;
2 provided that owners of premises having vested
3 water rights under existing laws appurtenant to
4 the premises shall not be charged for the
5 installation or use of the water meters on the
6 premises; [~~and~~]
- 7 (F) Take over from the State existing waterworks
8 systems, including water rights, pipelines, and
9 other appurtenances belonging thereto, and sewer
10 systems, and to enlarge, develop, and improve the
11 same; and
- 12 (G) For purposes of subparagraphs (B) and (C):
- 13 (i) "Infiltration" means groundwater, rainwater,
14 and saltwater that enters the county sewer
15 system through cracked, broken, or defective
16 sewer laterals; and
- 17 (ii) "Inflow" means non-sewage entering the
18 county sewer system via inappropriate or
19 illegal connections;
- 20 (24) (A) Each county may impose civil fines, in addition
21 to criminal penalties, for any violation of



1 county ordinances or rules after reasonable
2 notice and requests to correct or cease the
3 violation have been made upon the violator. Any
4 administratively imposed civil fine shall not be
5 collected until after an opportunity for a
6 hearing under chapter 91. Any appeal shall be
7 filed within thirty days from the date of the
8 final written decision. These proceedings shall
9 not be a prerequisite for any civil fine or
10 injunctive relief ordered by the circuit court;

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



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



1 favor of the county shall be subordinate to any
2 lien in favor of any person recorded or
3 registered prior to the recordation of the notice
4 of unpaid civil fines and senior to any lien
5 recorded or registered after the recordation of
6 the notice. The lien shall continue until the
7 unpaid civil fines are paid in full or until a
8 certificate of release or partial release of the
9 lien, prepared by the county at the owner's
10 expense, is recorded. The notice of unpaid civil
11 fines shall state the amount of the fine as of
12 the date of the notice and maximum permissible
13 daily increase of the fine. The county shall not
14 be required to include a social security number,
15 state general excise taxpayer identification
16 number, or federal employer identification number
17 on the notice. Recordation of the notice in the
18 bureau of conveyances shall be deemed, at such
19 time, for all purposes and without any further
20 action, to procure a lien on land registered in
21 land court under chapter 501. After the unpaid



1 civil fines are added to the taxes, fees, or
2 charges as specified by county ordinance, the
3 unpaid civil fines shall be deemed immediately
4 due, owing, and delinquent and may be collected
5 in any lawful manner. The procedure for
6 collection of unpaid civil fines authorized in
7 this paragraph shall be in addition to any other
8 procedures for collection available to the State
9 and county by law or rules of the courts;

10 (C) Each county may impose civil fines upon any
11 person who places graffiti on any real or
12 personal property owned, managed, or maintained
13 by the county. The fine may be up to \$1,000 or
14 may be equal to the actual cost of having the
15 damaged property repaired or replaced. The
16 parent or guardian having custody of a minor who
17 places graffiti on any real or personal property
18 owned, managed, or maintained by the county shall
19 be jointly and severally liable with the minor
20 for any civil fines imposed hereunder. Any such
21 fine may be administratively imposed after an



1 opportunity for a hearing under chapter 91, but
2 such a proceeding shall not be a prerequisite for
3 any civil fine ordered by any court. As used in
4 this subparagraph, "graffiti" means any
5 unauthorized drawing, inscription, figure, or
6 mark of any type intentionally created by paint,
7 ink, chalk, dye, or similar substances;

8 (D) At the completion of an appeal in which the
9 county's enforcement action is affirmed and upon
10 correction of the violation if requested by the
11 violator, the case shall be reviewed by the
12 county agency that imposed the civil fines to
13 determine the appropriateness of the amount of
14 the civil fines that accrued while the appeal
15 proceedings were pending. In its review of the
16 amount of the accrued fines, the county agency
17 may consider:

18 (i) The nature and egregiousness of the
19 violation;

20 (ii) The duration of the violation;



- 1 (iii) The number of recurring and other similar
- 2 violations;
- 3 (iv) Any effort taken by the violator to correct
- 4 the violation;
- 5 (v) The degree of involvement in causing or
- 6 continuing the violation;
- 7 (vi) Reasons for any delay in the completion of
- 8 the appeal; and
- 9 (vii) Other extenuating circumstances.

10 The civil fine that is imposed by administrative
11 order after this review is completed and the
12 violation is corrected shall be subject to
13 judicial review, notwithstanding any provisions
14 for administrative review in county charters;

15 (E) After completion of a review of the amount of
16 accrued civil fine by the county agency that
17 imposed the fine, the amount of the civil fine
18 determined appropriate, including both the
19 initial civil fine and any accrued daily civil
20 fine, shall immediately become due and
21 collectible following reasonable notice to the



1 violator. If no review of the accrued civil fine
2 is requested, the amount of the civil fine, not
3 to exceed the total accrual of civil fine prior
4 to correcting the violation, shall immediately
5 become due and collectible following reasonable
6 notice to the violator, at the completion of all
7 appeal proceedings [7]. After all notices,
8 orders, and appeal proceedings are exhausted, a
9 county may satisfy all unpaid civil fines through
10 the power of sale on the real property subject to
11 a recorded lien. A power of sale shall become
12 fully effective within a county upon the
13 enactment or adoption by the county of
14 appropriate and particular laws, ordinances, or
15 rules establishing the power of sale; and

16 (F) If no county agency exists to conduct appeal
17 proceedings for a particular civil fine action
18 taken by the county, then one shall be
19 established by ordinance before the county shall
20 impose the civil fine;



1 (25) Any law to the contrary notwithstanding, any county
 2 mayor, by executive order, may exempt donors, provider
 3 agencies, homeless facilities, and any other program
 4 for the homeless under part XVII of chapter 346 from
 5 real property taxes, water and sewer development fees,
 6 rates collected for water supplied to consumers and
 7 for use of sewers, and any other county taxes,
 8 charges, or fees; provided that any county may enact
 9 ordinances to regulate and grant the exemptions
 10 granted by this paragraph;

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

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

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

17 SECTION 4. This Act shall take effect upon its approval.

18 INTRODUCED BY: 



S.B. NO. 598

Report Title:

Counties; Civil Fines; Sale of Real Property

Description:

Authorizes counties, after adoption of an ordinance, to sell private property after all notices, orders, and appeal proceedings are exhausted and to use those revenues to pay unpaid civil fines related to that property.

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

