

H.B. NO. 1421

A BILL FOR AN ACT

RELATING TO CRIMINAL PROPERTY DAMAGE.

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 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, which 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 to
17 aerial navigation, so far as may be necessary or proper

1 for the protection and safeguarding of life, health,
2 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 county
13 officer;

14 (5) Each county shall have the power to maintain channels,
15 whether natural or artificial, including their exits to
16 the ocean, in suitable condition to carry off storm
17 waters; and to remove from the channels, and from the
18 shores and beaches, any debris that is likely to create
19 an unsanitary condition or become a public nuisance;
20 provided that, to the extent any of the foregoing work
21 is a private responsibility, the responsibility may be
22 enforced by the county in lieu of the work being done

- 1 at public expense. Counties also shall have the power
2 to construct, acquire by gift, purchase, or by the
3 exercise of eminent domain, reconstruct, improve,
4 better, extend, and maintain projects or undertakings
5 for the control of and protection against floods and
6 flood waters, including the power to drain and
7 rehabilitate lands already flooded, and to enact zoning
8 ordinances providing that lands deemed subject to
9 seasonable, periodic, or occasional flooding shall not
10 be used for residence or other purposes in a manner as
11 to endanger the health or safety of the occupants
12 thereof, as required by the Federal Flood Insurance Act
13 of 1956 (chapter 1025, Public Law 1016);
- 14 (6) Each county shall have the power to exercise the power
15 of condemnation by eminent domain when it is in the
16 public interest to do so;
- 17 (7) Each county shall have the power to exercise regulatory
18 powers over business activity as are assigned to them
19 by chapter 445 or other general law;
- 20 (8) Each county shall have the power to fix the fees and
21 charges for all official services not otherwise
22 provided for;

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

1 comply with the ordinances. The authority provided by
2 this paragraph shall not be self-executing, but shall
3 become fully effective within a county only upon the
4 enactment or adoption by the county of appropriate and
5 particular laws, ordinances, or rules defining "public
6 nuisances" with respect to each county's respective
7 circumstances. The counties shall provide the property
8 owner with the opportunity to contest the summary
9 action and to recover the owner's property;

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

19 (14) Each county shall have the power to make and enforce
20 within the limits of the county all necessary
21 ordinances covering: all local police matters; all
22 matters of sanitation; all matters of inspection of

1 buildings; all matters of condemnation of unsafe
2 structures, plumbing, sewers, dairies, milk, fish, and
3 morgues; all matters of the collection and disposition
4 of rubbish and garbage; and to provide exemptions for
5 homeless facilities and any other program for the
6 homeless authorized by chapter 201G, for all matters
7 under this paragraph; and to appoint county physicians
8 and sanitary and other inspectors as necessary to carry
9 into effect ordinances made under this paragraph, who
10 shall have the same power as given by law to agents of
11 the department of health, subject only to limitations
12 placed on them by the terms and conditions of their
13 appointments; and to fix a penalty for the violation of
14 any ordinance, which penalty may be a misdemeanor,
15 petty misdemeanor, or violation as defined by general
16 law;

17 (15) Each county shall have the power to provide public
18 pounds, to regulate the impounding of stray animals and
19 fowl, and their disposition, and to provide for the
20 appointment, powers, duties, and fees of animal control
21 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 the
5 interests of the inhabitants of the county may require,
6 except that: any property held for school purposes may
7 not be disposed of without the consent of the
8 superintendent of education; no property bordering the
9 ocean shall be sold or otherwise disposed of; and all
10 proceeds from the sale of park lands shall be expended
11 only for the acquisition of property for park or
12 recreational purposes;

13 (17) Each county shall have the power to provide by charter
14 for the prosecution of all offenses and to prosecute
15 for offenses against the laws of the State under the
16 authority of the attorney general of the State;

17 (18) Each county shall have the power to make appropriations
18 in amounts deemed appropriate from any moneys in the
19 treasury, for the purpose of community promotion and
20 public celebrations, the entertainment of distinguished
21 persons as may from time to time visit the county, for
22 the entertainment of other distinguished persons as

1 well as public officials when deemed to be in the best
2 interest of the community, and the rendering of civic
3 tribute to individuals who, by virtue of their
4 accomplishments and community service, merit civic
5 commendations, recognition, or remembrance;

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

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

17 (B) Regulate and control the location and quality of
18 all appliances necessary to the furnishing of
19 water, heat, light, power, telephonic, and
20 telegraphic service to the county;

21 (C) Acquire, regulate, and control any and all
22 appliances for the sprinkling and cleaning of the

1 streets and the public ways and for flushing the
2 sewers; and

3 (D) Open, close, construct, or maintain county
4 highways or charge toll on county highways;
5 provided that all revenues received from a toll
6 charge shall be used for the construction or
7 maintenance of county highways;

8 (20) Each county shall have the power to regulate the
9 renting, subletting, and rental conditions of property
10 for places of abode by ordinance;

11 (21) Unless otherwise provided by law, each county shall
12 have the power to establish by ordinance the order of
13 succession of county officials in the event of a
14 military or civil disaster;

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

17 (23) Each county shall have the power to establish and
18 maintain waterworks and sewer works; to collect rates
19 for water supplied to consumers and for the use of
20 sewers; to install water meters whenever deemed
21 expedient; provided that owners of premises having
22 vested water rights under existing laws appurtenant to

1 the premises shall not be charged for the installation
2 or use of the water meters on the premises; to take
3 over from the State existing waterworks systems,
4 including water rights, pipelines, and other
5 appurtenances belonging thereto, and sewer systems, and
6 to enlarge, develop, and improve the same;

7 (24) (A) Each county may impose civil fines, in addition to
8 criminal penalties, for any violation of county
9 ordinances or rules after reasonable notice and
10 requests to correct or cease the violation have
11 been made upon the violator. Any administratively
12 imposed civil fine shall not be collected until
13 after an opportunity for a hearing under chapter
14 91. Any appeal shall be filed within thirty days
15 from the date of the final written decision.

16 These proceedings shall not be a prerequisite for
17 any civil fine or injunctive relief ordered by the
18 circuit court;

19 (B) Each county by ordinance may provide for the
20 addition of any unpaid civil fines, ordered by any
21 court of competent jurisdiction, to any taxes,
22 fees, or charges, with the exception of fees or

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1 charges for water for residential use and sewer
2 charges collected by the county. Each county by
3 ordinance may also provide for the addition of any
4 unpaid administratively imposed civil fines, which
5 remain due after all judicial review rights under
6 section 91-14 are exhausted, to any taxes, fees,
7 or charges, with the exception of water for
8 residential use and sewer charges, collected by
9 the county. The ordinance shall specify the
10 administrative procedures for the addition of the
11 unpaid civil fines to the eligible taxes, fees, or
12 charges and may require hearings or other
13 proceedings. After addition of the unpaid civil
14 fines to the taxes, fees, or charges, the unpaid
15 civil fines shall not become a part of any taxes,
16 fees, or charges. The county by ordinance may
17 condition the issuance or renewal of a license,
18 approval, or permit for which a fee or charge is
19 assessed, except for water for residential use and
20 sewer charges, on payment of the unpaid civil
21 fines. Upon recordation of a notice of unpaid
22 civil fines in the bureau of conveyances, the

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1 amount of the civil fines, including any increase
2 in the amount of the fine which the county may
3 assess, shall constitute a lien upon all real
4 property or rights to real property belonging to
5 any person liable for the unpaid civil fines. The
6 lien in favor of the county shall be subordinate
7 to any lien in favor of any person recorded or
8 registered prior to the recordation of the notice
9 of unpaid civil fines and senior to any lien
10 recorded or registered after the recordation of
11 the notice. The lien shall continue until the
12 unpaid civil fines are paid in full or until a
13 certificate of release or partial release of the
14 lien, prepared by the county at the owner's
15 expense, is recorded. The notice of unpaid civil
16 fines shall state the amount of the fine as of the
17 date of the notice and maximum permissible daily
18 increase of the fine. The county shall not be
19 required to include a social security number,
20 state general excise taxpayer identification
21 number, or federal employer identification number
22 on the notice. Recordation of the notice in the

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1 bureau of conveyances shall be deemed, at such
2 time, for all purposes and without any further
3 action, to procure a lien on land registered in
4 land court under chapter 501. After the unpaid
5 civil fines are added to the taxes, fees, or
6 charges as specified by county ordinance, the
7 unpaid civil fines shall be deemed immediately
8 due, owing and delinquent and may be collected in
9 any lawful manner. The procedure for collection
10 of unpaid civil fines authorized in this paragraph
11 shall be in addition to any other procedures for
12 collection available to the State and county by
13 law or rules of the courts;

14 (C) Each county may impose civil fines upon any
15 person who places graffiti on any real or
16 personal property owned, managed, or maintained
17 by the county, the state or a private entity.
18 The fine may be up to [~~\$1,000~~] \$5,000 or may be
19 equal to the actual cost of having the damaged
20 property repaired or replaced. The parent or
21 guardian having custody of a minor who places
22 graffiti on any real or personal property owned,

1 managed, or maintained by the county shall be
2 jointly and severally liable with the minor for
3 any civil fines imposed hereunder. Any such fine
4 may be administratively imposed after an
5 opportunity for a hearing under chapter 91, but
6 such a proceeding shall not be a prerequisite for
7 any civil fine ordered by any court.

8 Additionally, the person who places graffiti will
9 be subject to the withdrawal of the person's
10 privilege to drive a motor vehicle for a period
11 of no less than one year. As used in this
12 subparagraph, "graffiti" means any unauthorized
13 drawing, inscription, figure, or mark of any type
14 intentionally created by paint, ink, chalk, dye,
15 or similar substances;

16 (D) At the completion of an appeal in which the
17 county's enforcement action is affirmed and upon
18 correction of the violation if requested by the
19 violator, the case will be reviewed by the county
20 agency that imposed the civil fines to determine
21 the appropriateness of the amount of the civil
22 fines that accrued while the appeal proceedings

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1 were pending. In its review of the amount of the
2 accrued fines, the county agency may consider the
3 following: nature and egregiousness of the
4 violation, duration of the violation, number of
5 recurring and other similar violations, effort
6 taken by the violator to correct the violation,
7 degree of involvement in causing or continuing the
8 violation, reasons for any delay in the completion
9 of the appeal, and other extenuating
10 circumstances. The civil fine which is imposed by
11 administrative order after this review is
12 completed and the violation is corrected is
13 subject to only judicial review, notwithstanding
14 any provisions for administrative review in county
15 charters;

16 (E) After completion of a review of the amount of
17 accrued civil fine by the county agency which
18 imposed the fine, the amount of the civil fine
19 determined appropriate, including both the initial
20 civil fine and any accrued daily civil fine, shall
21 immediately become due and collectible following
22 reasonable notice to the violator. If no review

1 of the accrued civil fine is requested, the amount
2 of the civil fine, not to exceed the total accrual
3 of civil fine prior to correcting the violation,
4 shall immediately become due and collectible
5 following reasonable notice to the violator, at
6 the completion of all appeal proceedings;

7 (F) If no county agency exists to conduct appeal
8 proceedings for a particular civil fine action
9 taken by the county, then one shall be established
10 by ordinance before the county shall impose that
11 civil fine;

12 (25) Any law to the contrary notwithstanding, any county
13 mayor may exempt by executive order donors, provider
14 agencies, homeless facilities, and any other program
15 for the homeless under chapter 201G from real property
16 taxes, water and sewer development fees, rates
17 collected for water supplied to consumers and for use
18 of sewers, and any other county taxes, charges, or
19 fees; provided that any county may enact ordinances to
20 regulate and grant the exemptions granted by this
21 paragraph;

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

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

5 SECTION 2. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

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

8
9 INTRODUCED BY:

Calvin K. Y. Amy

10 BY REQUEST

JAN 22 2007

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO CRIMINAL PROPERTY DAMAGE.

PURPOSE: To establish a fine and require community service and the revocation of driver's license for a one-year period for graffiti violations on public or private property.

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

JUSTIFICATION: To create stiffer penalties to prevent and deter graffiti and continual acts of graffiti.

Impact on the public: Cost savings from graffiti clean up can be used to maintain highways.

Impact on the department and other agencies: This bill creates stiffer penalties for graffiti, including the revocation of a driver's license.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: TRN 595.

OTHER AFFECTED AGENCIES: Department of Education, Department of Accounting and General Services, Department of Land and Natural Resources, Department of the Attorney General, Judiciary, County Prosecutors, Public Defenders and County Police

EFFECTIVE DATE: Upon approval.