

JAN 19 2007

A BILL FOR AN ACT

RELATING TO GRAFFITI.

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

1 SECTION 1. The legislature finds that graffiti is a public
2 nuisance and destructive of the rights and values of property
3 owners, as well as the entire community. Reported incidents of
4 graffiti in Hawaii are increasing. The spread of graffiti
5 causes blight on the landscape and demoralizes the community.
6 One way of combating the spread of graffiti is to remove it as
7 quickly as possible. However, the statewide cost of removing
8 graffiti is estimated to be \$1,000,000 annually. It is
9 important to engage the community in an effort to eradicate
10 graffiti from our State.

11 The purpose of this Act is to help prevent the spread of
12 graffiti by establishing programs and other initiatives to
13 educate the public about the destructive effects of graffiti and
14 to promote the removal of graffiti from public and private
15 property.



1 SECTION 2. (a) The department of transportation shall
2 develop and implement a program to educate the public about the
3 destructive effects of graffiti and to eradicate graffiti.

4 (b) In developing and implementing the program, the
5 department of transportation shall:

6 (1) Model the program on the adopt-a-highway program by:

7 (A) Encouraging schools, community groups, churches,
8 and businesses to volunteer to remove graffiti;

9 (B) Providing safety training to the volunteers;

10 (C) Providing volunteers with educational materials,
11 safety equipment, and the supplies necessary to
12 remove graffiti; and

13 (D) Erecting a highway sign to recognize the
14 volunteers' efforts;

15 (2) Establish a graffiti specialist position to administer
16 the program; and

17 (3) Consider establishing a special patrol to monitor and
18 report graffiti.

19 (c) The department of transportation shall submit an
20 interim report to the legislature no later than twenty days
21 prior to the convening of the 2008 regular session, and shall
22 submit a final report, including any proposed legislation, to



1 the legislature no later than twenty days prior to the convening
2 of the 2009 regular session.

3 SECTION 3. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$, or so
5 much thereof as may be necessary for fiscal year 2007-2008, and
6 the same sum, or so much thereof as may be necessary for fiscal
7 year 2008-2009, for the purposes described in section 2.

8 The sums appropriated shall be expended by the department
9 of transportation for the purposes of this Act.

10 SECTION 4. (a) The department of education shall develop
11 and implement a program, as part of the school civic
12 responsibility program, to educate students about the
13 destructive effects of graffiti and to encourage student
14 participation in the eradication of graffiti.

15 (b) In developing and implementing the program, the
16 department of education shall:

17 (1) Consider requiring participation in the program as an
18 after-school detention activity;

19 (2) Establish and assign geographic areas to each public
20 school; and



1 (3) Provide the schools with educational materials, safety
2 equipment, and the supplies necessary to remove
3 graffiti.

4 (c) The department of education shall submit an interim
5 report to the legislature no later than twenty days prior to the
6 convening of the 2008 regular session, and shall submit a final
7 report, including any proposed legislation, to the legislature
8 no later than twenty days prior to the convening of the 2009
9 regular session.

10 SECTION 5. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$, or so
12 much thereof as may be necessary for fiscal year 2007-2008, and
13 the same sum, or so much thereof as may be necessary for fiscal
14 year 2008-2009, for the purposes described in section 4.

15 The sums appropriated shall be expended by the department
16 of education for the purposes of this Act.

17 SECTION 6. (a) In accordance with section 46-1.5, Hawaii
18 Revised Statutes, each county shall enact and enforce ordinances
19 necessary to:

20 (1) Prevent and summarily remove graffiti;



1 (2) Compel the removal of any graffiti from streets,
2 sidewalks, public places, unoccupied lots, and private
3 business and residential property; and

4 (3) Impose and enforce civil fines if the owner fails,
5 after reasonable notice, to comply with the
6 ordinances.

7 (b) Nothing in this section shall be construed to prevent
8 a private property owner from authorizing graffiti-type artwork,
9 such as a mural painting, for decorative purposes.

10 (c) For purposes of this section, "graffiti" means any
11 unauthorized inscription, word, figure, painting, or other
12 defacement that is written, marked, etched, scratched, sprayed,
13 drawn, painted, or engraved on or otherwise affixed to any
14 surface of public or private property by any graffiti implement,
15 to the extent that the graffiti was not authorized in advance by
16 the owner or occupant of the property.

17 (d) Each county shall submit an interim report to the
18 legislature no later than twenty days prior to the convening of
19 the 2008 regular session, and shall submit a final report,
20 including any proposed legislation, to the legislature no later
21 than twenty days prior to the convening of the 2009 regular
22 session.



1 SECTION 7. There is appropriated out of the general
 2 revenues of the State of Hawaii the following sums, or so much
 3 thereof as may be necessary for fiscal year 2007-2008, and the
 4 same sum, or so much thereof as may be necessary for fiscal year
 5 2008-2009, to assist the counties in implementing section 6 of
 6 this Act:

7	City and county of Honolulu	\$
8	County of Kauai	\$
9	County of Maui	\$
10	County of Hawaii	\$
11	Total	\$

12 The sums appropriated shall be expended by each county for
 13 the purposes of this Act.

14 SECTION 8. (a) Each county shall develop and implement a
 15 program to educate the public about the destructive effects of
 16 graffiti and to eradicate graffiti from the streets, roads, and
 17 other throughways within each county's jurisdiction.

18 (b) In developing and implementing the program, each
 19 county shall:

- 20 (1) Consult with the department of transportation;
- 21 (2) Model the program on the state adopt-a-highway
- 22 program;



1 (3) Encourage schools, community groups, churches, and
2 businesses to volunteer to remove graffiti;

3 (4) Provide safety training to the volunteers;

4 (5) Provide volunteers with educational materials, safety
5 equipment, and the supplies necessary to remove
6 graffiti; and

7 (6) Whenever possible, erect a sign to recognize the
8 volunteers' efforts.

9 (c) Each shall submit an interim report to the legislature
10 no later than twenty days prior to the convening of the 2008
11 regular session, and shall submit a final report, including any
12 proposed legislation, to the legislature no later than twenty
13 days prior to the convening of the 2009 regular session.

14 SECTION 9. There is appropriated out of the general
15 revenues of the State of Hawaii the following sums, or so much
16 thereof as may be necessary for fiscal year 2007-2008, and the
17 same sum, or so much thereof as may be necessary for fiscal year
18 2008-2009, to assist the counties in implementing section 8 of
19 this Act:

20	City and county of Honolulu	\$
21	County of Kauai	\$
22	County of Maui	\$

1 County of Hawaii \$

2 Total S

3 The sums appropriated shall be expended by each county for
4 the purposes of this Act.

5 SECTION 10. Chapter 235, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "§235- Graffiti removal tax credit. (a) There shall be
9 allowed to each taxpayer subject to the taxes imposed by this
10 chapter, an income tax credit, which shall be deductible from
11 the taxpayer's net income tax liability, if any, imposed by this
12 chapter for the taxable year in which the credit is properly
13 claimed.

14 (b) The amount of the tax credit shall be per cent
15 of the costs of removing unauthorized graffiti incurred during
16 the taxable year for which the credit is claimed; provided that
17 the costs shall not exceed \$ in the aggregate for each
18 taxpayer.

19 (c) In the case of a partnership, S corporation, estate,
20 trust, or association of apartment owners, the tax credit
21 allowable is for the costs of removing unauthorized graffiti
22 incurred by the entity for the taxable year. The cost upon



1 which the tax credit is computed shall be determined at the
2 entity level. Distribution and share of credit shall be
3 determined pursuant to section 235-110.7(a).

4 (d) If the tax credit under this section exceeds the
5 taxpayer's income tax liability, the excess of the credit over
6 liability may be used as a credit against the taxpayer's income
7 tax liability in subsequent years until exhausted. All claims
8 for the tax credit under this section, including amended claims,
9 shall be filed on or before the end of the twelfth month
10 following the close of the taxable year for which the credit may
11 be claimed. Failure to comply with this subsection shall
12 constitute a waiver of the right to claim the credit.

13 (e) For purposes of this section, "graffiti" means any
14 unauthorized inscription, word, figure, painting, or other
15 defacement that is written, marked, etched, scratched, sprayed,
16 drawn, painted, or engraved on or otherwise affixed to any
17 surface of public or private property by any graffiti implement,
18 to the extent that the graffiti was not authorized in advance by
19 the owner or occupant of the property.

20 (f) The director of taxation may adopt rules under chapter
21 91 and forms necessary to carry out this section."



1 SECTION 11. 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~~] that
9 shall establish the county executive, administrative,
10 and legislative structure and organization,
11 including [~~, but not limited to,~~] the method of
12 appointment or election of officials, their duties,
13 responsibilities, and compensation, and the terms of
14 their office;
- 15 (2) Each county shall have the power to provide for and
16 regulate the marking and lighting of all buildings and
17 other structures that may be obstructions or hazards
18 to aerial navigation [~~, so far~~] as may be necessary or
19 proper for the protection and safeguarding of life,
20 health, and property;
- 21 (3) Each county shall have the power to enforce all claims
22 on behalf of the county and approve all lawful claims



1 against the county, [~~but~~] except that the county shall
2 be prohibited from entering into, granting, or making
3 in any manner any contract, authorization, allowance
4 payment, or liability contrary to the provisions of
5 any county 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 maintain channels,
11 whether natural or artificial, including their exits
12 to the ocean, in suitable condition to carry off storm
13 waters; and to remove from the channels, and from the
14 shores and beaches, any debris that is likely to
15 create an unsanitary condition or become a public
16 nuisance; provided that, to the extent any of the
17 foregoing work is a private responsibility, the
18 responsibility may be enforced by the county in lieu
19 of the work being done at public expense. Counties
20 also shall have the power to construct, acquire by
21 gift, purchase, or by the exercise of eminent domain,
22 reconstruct, improve, better, extend, and maintain



1 projects or undertakings for the control of and
2 protection against floods and flood waters, including
3 the power to drain and rehabilitate lands already
4 flooded, and to enact zoning ordinances providing that
5 lands deemed subject to seasonable, periodic, or
6 occasional flooding shall not be used for residence or
7 other purposes in a manner as to endanger the health
8 or safety of the occupants thereof, as required by the
9 Federal Flood Insurance Act of 1956 (chapter 1025,
10 Public Law 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, and in these connections, to
17 impose and enforce liens upon the property for the
18 cost to the county of removing and completing the
19 necessary work where the owners fail, after reasonable
20 notice, to comply with the ordinances. The authority
21 provided by this paragraph shall not be self-
22 executing, but shall become fully effective within a



1 county only upon the enactment or adoption by the
 2 county of appropriate and particular laws, ordinances,
 3 or rules defining "public nuisances" with respect to
 4 each county's respective circumstances. The counties
 5 shall provide the property owner with the opportunity
 6 to contest the summary action and to recover the
 7 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[7]; provided [alse]
 14 that the statute does not disclose an express or
 15 implied intent that the statute shall be exclusive or
 16 uniform throughout the State;

17 (14) Each county shall have the power to make and enforce
 18 within the limits of the county all necessary
 19 ordinances covering: all local police matters; all
 20 matters of sanitation; all matters of inspection of
 21 buildings; all matters of condemnation of unsafe
 22 structures, plumbing, sewers, dairies, milk, fish, and



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

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

20 (16) Each county shall have the power to purchase and
21 otherwise acquire, lease, and hold real and personal
22 property within the defined boundaries of the county



1 and to dispose of the real and personal property as
 2 the interests of the inhabitants of the county may
 3 require, except that: any property held for school
 4 purposes [~~may~~] shall not be disposed of without the
 5 consent of the superintendent of education; no
 6 property bordering the ocean shall be sold or
 7 otherwise disposed of; and all proceeds from the sale
 8 of park lands shall be expended only for the
 9 acquisition of property for park or recreational
 10 purposes;

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

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



1 and the rendering of civic tribute to individuals who,
2 by virtue of their accomplishments and community
3 service, merit civic commendations, recognition, or
4 remembrance;

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

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

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

20 (C) Acquire, regulate, and control any and all
21 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,
6 and to enlarge, develop, and improve the same;

- 7 (24) (A) Each county may impose civil fines, in addition
8 to criminal penalties, for any violation of
9 county ordinances or rules after reasonable
10 notice and requests to correct or cease the
11 violation have been made upon the violator. Any
12 administratively imposed civil fine shall not be
13 collected until after an opportunity for a
14 hearing under chapter 91. Any appeal shall be
15 filed within thirty days from the date of the
16 final written decision. These proceedings shall
17 not be a prerequisite for any civil fine or
18 injunctive relief ordered by the circuit court;
- 19 (B) Each county by ordinance may provide for the
20 addition of any unpaid civil fines, ordered by
21 any court of competent jurisdiction, to any
22 taxes, fees, or charges, with the exception of



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



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



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

15 (C) Each county may impose civil fines and mandate
 16 community service upon any person who places
 17 graffiti on any real or personal property owned,
 18 managed, or maintained by the county. The fine
 19 may be up to [~~\$1,000~~] \$2,500 or may be equal to
 20 the actual cost of having the damaged property
 21 repaired or replaced. The parent or guardian
 22 having custody of a minor who places graffiti on



1 any real or personal property owned, managed, or
2 maintained by the county shall be jointly and
3 severally liable with the minor for any civil
4 fines and community service imposed hereunder.
5 Any such fine and community service may be
6 administratively imposed after an opportunity for
7 a hearing under chapter 91 [~~but such a~~
8 ~~proceeding~~]; provided that a hearing under
9 chapter 91 shall not be a prerequisite for any
10 civil fine ordered by any court. As used in this
11 subparagraph, "graffiti" means any unauthorized
12 [~~drawing, inscription, figure, or mark of any~~
13 ~~type intentionally created by paint, ink, chalk,~~
14 ~~dye, or similar substances,~~] inscription, word,
15 figure, painting, or other defacement that is
16 written, marked, etched, scratched, sprayed,
17 drawn, painted, or engraved on or otherwise
18 affixed to any surface of public or private
19 property by any graffiti implement, to the extent
20 that the graffiti was not authorized in advance
21 by the owner or occupant of the property;



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 will be reviewed by the county
5 agency that imposed the civil fines to determine
6 the appropriateness of the amount of the civil
7 fines that accrued while the appeal proceedings
8 were pending. In its review of the amount of the
9 accrued fines, the county agency may consider the
10 following: nature and egregiousness of the
11 violation, duration of the violation, number of
12 recurring and other similar violations, effort
13 taken by the violator to correct the violation,
14 degree of involvement in causing or continuing
15 the violation, reasons for any delay in the
16 completion of the appeal, and other extenuating
17 circumstances. The civil fine [~~which~~] that is
18 imposed by administrative order after this review
19 is completed and the violation is corrected is
20 subject to only judicial review, notwithstanding
21 any provisions for administrative review in
22 county charters;



1 (E) After completion of a review of the amount of
2 accrued civil fine by the county agency which
3 imposed the fine, the amount of the civil fine
4 determined appropriate, including both the
5 initial civil fine and any accrued daily civil
6 fine, shall immediately become due and
7 collectible following reasonable notice to the
8 violator. If no review of the accrued civil fine
9 is requested, the amount of the civil fine, not
10 to exceed the total accrual of civil fine prior
11 to correcting the violation, shall immediately
12 become due and collectible following reasonable
13 notice to the violator, at the completion of all
14 appeal proceedings;

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

20 (25) Any law to the contrary notwithstanding, any county
21 mayor may exempt by executive order donors, provider
22 agencies, homeless facilities, and any other program



1 for the homeless under chapter 201G from real property
 2 taxes, water and sewer development fees, rates
 3 collected for water supplied to consumers and for use
 4 of sewers, and any other county taxes, charges, or
 5 fees; provided that any county may enact ordinances to
 6 regulate and grant the exemptions granted by this
 7 paragraph;

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

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

12 SECTION 12. Statutory material to be repealed is bracketed
 13 and stricken. New statutory material is underscored.

14 SECTION 13. This Act shall take effect upon its approval;
 15 provided that sections 3, 5, 7, and 9 shall take effect on
 16 July 1, 2007; provided further that section 10 shall apply to
 17 taxable years beginning after December 31, 2006.

18
 INTRODUCED BY: Norman Sabornie

Report Title:

Graffiti

Description:

Establishes several initiatives to educate the public about the destructive effects of and to eradicate graffiti.

