

JAN 18 2012

S.B. NO. 2076

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# A BILL FOR AN ACT

RELATING TO COUNTIES.

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

1       SECTION 1. The purpose of this Act is to provide the  
2 counties with the authority to pass notice of defect ordinances  
3 mandating written notification of defects and obstructions on or  
4 in county roadways, streets, highways, bridges, culverts,  
5 sidewalks, walkways, parks, playgrounds, or structures as a  
6 prerequisite to a claim or filing suit for damages to person or  
7 property against a county. Requiring written notice as a  
8 prerequisite to filing suit would preclude the assertion of a  
9 claim of "constructive notice" against the counties for unknown  
10 or unreported defects or conditions. A plaintiff or claimant  
11 would be required to show that written notice of a defect or  
12 obstruction was provided to the proper county designee. The  
13 written notice requirement will serve as a prerequisite or  
14 condition precedent to filing a negligence action or claim  
15 against a county.

16       Claims for "trips and falls" on county property are  
17 successively increasing. With limited resources and manpower,  
18 it is impossible for the counties to proactively inspect all



1 county property. This bill balances the interests of all  
2 parties by aiding the counties in identifying problematic areas,  
3 while tasking the counties with the responsibility to remediate  
4 or address the identified areas within a specific time period.

5 Several states have granted their municipalities the  
6 authority to implement prior written notice of defect laws or  
7 ordinances. This amendment to section 46-1.5, Hawaii Revised  
8 Statutes, would grant the counties the authority to pass similar  
9 ordinances with the written notice of defect requirements.

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

12 **"§46-1.5 General powers and limitation of the counties.**

13 Subject to general law, each county shall have the following  
14 powers and shall be subject to the following liabilities and  
15 limitations:

- 16 (1) Each county shall have the power to frame and adopt a  
17 charter for its own self-government that shall  
18 establish the county executive, administrative, and  
19 legislative structure and organization, including but  
20 not limited to the method of appointment or election  
21 of officials, their duties, responsibilities, and  
22 compensation, and the terms of their office;



(2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property;

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

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

(5) Each county shall have the power to:

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



- 1 (B) Remove from the channels, and from the shores and  
2 beaches, any debris that is likely to create an  
3 unsanitary condition or become a public nuisance;  
4 provided that, to the extent any of the foregoing  
5 work is a private responsibility, the  
6 responsibility may be enforced by the county in  
7 lieu of the work being done at public expense;
- 8 (C) Construct, acquire by gift, purchase, or by the  
9 exercise of eminent domain, reconstruct, improve,  
10 better, extend, and maintain projects or  
11 undertakings for the control of and protection  
12 against floods and flood waters, including the  
13 power to drain and rehabilitate lands already  
14 flooded; and
- 15 (D) Enact zoning ordinances providing that lands  
16 deemed subject to seasonable, periodic, or  
17 occasional flooding shall not be used for  
18 residence or other purposes in a manner as to  
19 endanger the health or safety of the occupants  
20 thereof, as required by the Federal Flood  
21 Insurance Act of 1956 (chapter 1025, Public Law  
22 1016);



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

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

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

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

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

(11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend rules the county deems necessary for the public convenience and necessity;



- (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal of any public nuisance, refuse, and uncultivated undergrowth from streets, sidewalks, public places, and unoccupied lots. In connection with these powers, each county may impose and enforce liens upon the property for the cost to the county of removing and completing the necessary work where the property owners fail, after reasonable notice, to comply with the ordinances. The authority provided by this paragraph shall not be self-executing, but shall become fully effective within a county only upon the enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "public nuisances" with respect to each county's respective circumstances. The counties shall provide the property owner with the opportunity to contest the summary action and to recover the owner's property;
- (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of



1 the county and its inhabitants on any subject or  
2 matter not inconsistent with, or tending to defeat,  
3 the intent of any state statute where the statute does  
4 not disclose an express or implied intent that the  
5 statute shall be exclusive or uniform throughout the  
6 State;

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

8 (A) Make and enforce within the limits of the county  
9 all necessary ordinances covering all:

10 (i) Local police matters;

11 (ii) Matters of sanitation;

12 (iii) Matters of inspection of buildings;

13 (iv) Matters of condemnation of unsafe

14 structures, plumbing, sewers, dairies, milk,  
15 fish, and morgues; and

16 (v) Matters of the collection and disposition of  
17 rubbish and garbage;

18 (B) Provide exemptions for homeless facilities and  
19 any other program for the homeless authorized by  
20 part XVII of chapter 346, for all matters under  
21 this paragraph;



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

8 (D) Fix a penalty for the violation of any ordinance,  
9 which penalty may be a misdemeanor, petty  
10 misdemeanor, or violation as defined by general  
11 law;

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

17 (16) Each county shall have the power to purchase and  
18 otherwise acquire, lease, and hold real and personal  
19 property within the defined boundaries of the county  
20 and to dispose of the real and personal property as  
21 the interests of the inhabitants of the county may  
22 require, except that:



1 (A) Any property held for school purposes may not be  
2 disposed of without the consent of the  
3 superintendent of education;

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

6 (C) All proceeds from the sale of park lands shall be  
7 expended only for the acquisition of property for  
8 park or recreational purposes;

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

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

16 (A) Community promotion and public celebrations;

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

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



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

(19) Each county shall have the power to:

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

(B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephone, and telecommunications service to the county;

(C) Acquire, regulate, and control any and all 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  
10 in any lawful manner. The procedure for  
11 collection of unpaid civil fines authorized in  
12 this 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 upon any  
16 person who places graffiti on any real or  
17 personal property owned, managed, or maintained  
18 by the county. The fine may be up to \$1,000 or  
19 may be equal to the actual cost of having the  
20 damaged property repaired or replaced. The  
21 parent or guardian having custody of a minor who  
22 places graffiti on any real or personal property



1 owned, managed, or maintained by the county shall  
2 be jointly and severally liable with the minor  
3 for any civil fines imposed hereunder. Any such  
4 fine 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. As used in  
8 this subparagraph, "graffiti" means any  
9 unauthorized drawing, inscription, figure, or  
10 mark of any type intentionally created by paint,  
11 ink, chalk, dye, or similar substances;

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



- (i) The nature and egregiousness of the violation;
- (ii) The duration of the violation;
- (iii) The number of recurring and other similar violations;
- (iv) Any effort taken by the violator to correct the violation;
- (v) The degree of involvement in causing or continuing the violation;
- (vi) Reasons for any delay in the completion of the appeal; and
- (vii) Other extenuating circumstances.

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

- (E) After completion of a review of the amount of accrued civil fine by the county agency that imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil



1 fine, shall immediately become due and  
2 collectible following reasonable notice to the  
3 violator. If no review of the accrued civil fine  
4 is requested, the amount of the civil fine, not  
5 to exceed the total accrual of civil fine prior  
6 to correcting the violation, shall immediately  
7 become due and collectible following reasonable  
8 notice to the violator, at the completion of all  
9 appeal proceedings;

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

15 (25) Any law to the contrary notwithstanding, any county  
16 mayor, by executive order, may exempt donors, provider  
17 agencies, homeless facilities, and any other program  
18 for the homeless under part XVII of chapter 346 from  
19 real property taxes, water and sewer development fees,  
20 rates collected for water supplied to consumers and  
21 for use of sewers, and any other county taxes,  
22 charges, or fees; provided that any county may enact



ordinances to regulate and grant the exemptions  
granted by this paragraph;

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

(27) Each county shall have the power to enact and enforce  
ordinances regulating towing operations[-]; and

(28) (A) Each county shall have the power to enact  
ordinances; provided that no civil action shall  
be maintained against a county for damages or  
injuries to person or property sustained by  
reason of any property owned, maintained, or  
controlled by a county, including but not limited  
to any roadway, street, highway, bridge, culvert,  
sidewalk, walkway, park, or playground, or  
because of any apparatus, furnishings, fixtures  
or improvements thereon being defective, unsafe,  
dangerous or obstructed, unless:

(i) Written notice that defective, unsafe,  
dangerous, or obstructed condition was  
received by the county's designee; and

(ii) The county failed or neglected to: repair,  
remove, or eliminate the defect, the out-of-



1                   repair or unsafe condition, or the danger or  
2                   obstruction complained of; or otherwise  
3                   undertake such other reasonable remedial  
4                   action within a reasonable time to warn or  
5                   prevent the public from being injured after  
6                   receiving such notice.

7           (B)   With regard to written notice, the county  
8                   enacting the ordinance shall keep an indexed  
9                   record, in a separate book, of all written  
10                  notices received by the county's designee. The  
11                  record shall include the date of receipt of the  
12                  notice, the nature and location of the condition  
13                  stated to exist, and the name and address of the  
14                  person from whom the notice is received. All such  
15                  written notices shall be indexed according to the  
16                  location of the alleged defective, unsafe, or  
17                  dangerous or obstructed condition.

18           (C)   This paragraph shall be applicable  
19                   notwithstanding any inconsistent provisions of  
20                   state law, whether general, special or local,  
21                   county ordinance, or any limitation contained in  
22                   the provisions of any city charter."



1       SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

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

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

7

INTRODUCED BY:



By Request



**Report Title:**

Counties; Tort Liability; Written Notice of Defect; City and County of Honolulu Package.

**Description:**

Permits counties to pass ordinances that require written notification of defects or obstructions on certain county properties as a prerequisite to filing a claim against the counties for injuries or damages arising from against the alleged unsafe or dangerous condition of county property.

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

