

JAN 29 2015

---

# A BILL FOR AN ACT

---

RELATING TO STORMWATER MANAGEMENT.

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

1       SECTION 1. The legislature finds that climate change poses  
2 a significant threat to the economy and environment of the  
3 Hawaiian islands and has contributed to an eighteen per cent  
4 drop in precipitation over the past thirty years. This  
5 increasing drying trend, coupled with growth in the State's  
6 population, will likely raise the demand for water and  
7 compromise Hawaii's fresh water supplies over the coming  
8 decades. If Hawaii does not begin planning ahead, ensuring the  
9 islands' supply of fresh water in the future may cost the public  
10 a great deal as the cost of desalination and other alternatives  
11 rise.

12       The legislature further finds that changes in land use from  
13 forested areas to urban development and other human uses  
14 increase the amount of rain ending up as storm run-off instead  
15 of replenishing the State's aquifers. Encouraging the adoption  
16 of best practices and infrastructure investment by the counties  
17 to capture and retain rainfall in Hawaii for potable water



1 before it becomes stormwater run-off that results in pollution  
2 to streams, wetlands, and near-shore ocean areas will save the  
3 public significantly in the long run.

4 The purpose of this Act is to encourage the protection of  
5 water resources by authorizing counties to charge user fees to  
6 create and maintain stormwater management systems or  
7 infrastructure.

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

10 **"§46-1.5 General powers and limitation of the counties.**

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

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

21 (2) Each county shall have the power to provide for and  
22 regulate the marking and lighting of all buildings and



1 other structures that may be obstructions or hazards  
2 to aerial navigation, so far as may be necessary or  
3 proper for the protection and safeguarding of life,  
4 health, and property;

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

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

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

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

20 (B) Remove from the channels, and from the shores and  
21 beaches, any debris that is likely to create an  
22 unsanitary condition or become a public nuisance;



1 provided that, to the extent any of the foregoing  
2 work is a private responsibility, the  
3 responsibility may be enforced by the county in  
4 lieu of the work being done at public expense;

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

12 (D) Enact zoning ordinances providing that lands  
13 deemed subject to seasonable, periodic, or  
14 occasional flooding shall not be used for  
15 residence or other purposes in a manner as to  
16 endanger the health or safety of the occupants  
17 thereof, as required by the Federal Flood  
18 Insurance Act of 1956 (chapter 1025, Public Law  
19 1016); and

20 (E) Establish and charge user fees to create and  
21 maintain any stormwater management system or  
22 infrastructure;



(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;



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



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

(14) Each county shall have the power to:

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

- (i) Local police matters;
- (ii) Matters of sanitation;
- (iii) Matters of inspection of buildings;
- (iv) Matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; and
- (v) Matters of the collection and disposition of rubbish and garbage;

(B) Provide exemptions for homeless facilities and any other program for the homeless authorized by part XVII of chapter 346, for all matters under 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:



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

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

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

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

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

(A) Community promotion and public celebrations;

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

(C) The entertainment of other distinguished persons, as well as, public officials when deemed to be in 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;

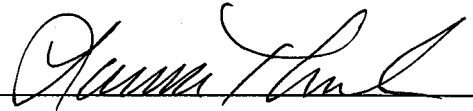
(26) Any county may establish a captive insurance company  
pursuant to article 19, chapter 431; and

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

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

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

INTRODUCED BY: \_\_\_\_\_



# S.B. NO. 1310

**Report Title:**

Stormwater Management; Counties; User Fees

**Description:**

Authorizes the counties to establish and charge user fees for stormwater management.

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

