

JAN 20 2017

A BILL FOR AN ACT

RELATING TO INVASIVE SPECIES.

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 that shall
9 establish the county executive, administrative, and
10 legislative structure and organization, including but
11 not limited to the method of appointment or election
12 of officials, their duties, responsibilities, and
13 compensation, and the terms of their office;

14 (2) Each county shall have the power to provide for and
15 regulate the marking and lighting of all buildings and
16 other structures that may be obstructions or hazards
17 to aerial navigation, so far as may be necessary or



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;

(B) Remove from the channels, and from the shores and
beaches, any debris that is likely to create an
unsanitary condition or become a public nuisance;
provided that, to the extent any of the foregoing



1 work is a private responsibility, the
2 responsibility may be enforced by the county in
3 lieu of the work being done at public expense;

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

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

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



S.B. NO. 409

(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



1 the county and adopt and amend rules the county deems
2 necessary for the public convenience and necessity;

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



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

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

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

13 (i) Local police matters;

14 (ii) Matters of sanitation;

15 (iii) Matters of inspection of buildings;

16 (iv) Matters of condemnation of unsafe

17 structures, plumbing, sewers, dairies, milk,
18 fish, and morgues; and

19 (v) Matters of the collection and disposition of
20 rubbish and garbage;



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

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

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

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



1 (16) Each county shall have the power to purchase and
2 otherwise acquire, lease, and hold real and personal
3 property within the defined boundaries of the county
4 and to dispose of the real and personal property as
5 the interests of the inhabitants of the county may
6 require, except that:

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

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

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

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

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



1 (A) Community promotion and public celebrations;

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

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

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

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

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



(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 streets and the public ways, and for flushing the sewers; and

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

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

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



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

3 (23) Each county shall have the power to establish and
4 maintain waterworks and sewer works; to collect rates
5 for water supplied to consumers and for the use of
6 sewers; to install water meters whenever deemed
7 expedient; provided that owners of premises having
8 vested water rights under existing laws appurtenant to
9 the premises shall not be charged for the installation
10 or use of the water meters on the premises; to take
11 over from the State existing waterworks systems,
12 including water rights, pipelines, and other
13 appurtenances belonging thereto, and sewer systems,
14 and to enlarge, develop, and improve the same;

15 (24) (A) Each county may impose civil fines, in addition
16 to criminal penalties, for any violation of
17 county ordinances or rules after reasonable
18 notice and requests to correct or cease the
19 violation have been made upon the violator. Any
20 administratively imposed civil fine shall not be
21 collected until after an opportunity for a



1 hearing under chapter 91. Any appeal shall be
2 filed within thirty days from the date of the
3 final written decision. These proceedings shall
4 not be a prerequisite for any civil fine or
5 injunctive relief ordered by the circuit court;

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



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



S.B. NO. 409

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



1 collection of unpaid civil fines authorized in
2 this paragraph shall be in addition to any other
3 procedures for collection available to the State
4 and county by law or rules of the courts;

5 (C) Each county may impose civil fines upon any
6 person who places graffiti on any real or
7 personal property owned, managed, or maintained
8 by the county. The fine may be up to \$1,000 or
9 may be equal to the actual cost of having the
10 damaged property repaired or replaced. The
11 parent or guardian having custody of a minor who
12 places graffiti on any real or personal property
13 owned, managed, or maintained by the county shall
14 be jointly and severally liable with the minor
15 for any civil fines imposed hereunder. Any such
16 fine may be administratively imposed after an
17 opportunity for a hearing under chapter 91, but
18 such a proceeding shall not be a prerequisite for
19 any civil fine ordered by any court. As used in
20 this subparagraph, "graffiti" means any
21 unauthorized drawing, inscription, figure, or



1 mark of any type intentionally created by paint,
2 ink, chalk, dye, or similar substances;

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

13 (i) The nature and egregiousness of the
14 violation;

15 (ii) The duration of the violation;

16 (iii) The number of recurring and other similar
17 violations;

18 (iv) Any effort taken by the violator to correct
19 the violation;

20 (v) The degree of involvement in causing or
21 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
fine, shall immediately become due and
collectible following reasonable notice to the
violation. If no review of the accrued civil fine
is requested, the amount of the civil fine, not
to exceed the total accrual of civil fine prior
to correcting the violation, shall immediately
become due and collectible following reasonable



notice to the violator, at the completion of all
appeal proceedings;

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

(25) Any law to the contrary notwithstanding, any county
mayor, by executive order, may exempt donors, provider
agencies, homeless facilities, and any other program
for the homeless under part XVII of chapter 346 from
real property taxes, water and sewer development fees,
rates collected for water supplied to consumers and
for use of sewers, and any other county taxes,
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) Each county shall have the power to enact and enforce ordinances necessary to prevent, investigate, control, or eradicate invasive species on any public or private premises within the limits of the county. The authority provided by this paragraph shall not be self-executing but shall become fully effective within a county only upon enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "invasive species" with respect to each county's respective circumstance. The counties shall provide property owners or their tenants with the opportunity to contest proposed county actions pursuant to this paragraph."

SECTION 2. Section 194-3, Hawaii Revised Statutes, is amended to read as follows:

"**[+]§194-3 Lead agencies; accountability.[+]** A state department that is designated as a lead agency under section **[+]194-2(a)(7)[+]**, with respect to a particular function of invasive species control, shall have sole administrative responsibility and accountability for that designated function of invasive species control~~[-]~~, except when a county acts



1 pursuant to the authority granted by section 46-1.5(28). The
2 lead agency shall:

3 (1) Coordinate all efforts between other departments and
4 federal and private agencies to control or eradicate
5 the designated invasive species;

6 (2) Prepare a biennial multidepartmental budget proposal
7 for the legislature forty days before the convening of
8 the regular session of the legislature in each odd-
9 numbered year, showing the budget requirements of each
10 of the lead agency's assigned invasive species
11 function that includes the budget requirements of all
12 departments that it leads for that species, as well as
13 other federal and private funding for that invasive
14 species;

15 (3) Prepare and distribute an annual progress report forty
16 days prior to the convening of each regular session of
17 the legislature to the governor and the legislature
18 that includes the status of each assigned function;
19 and

20 (4) Any other function of a lead agency necessary to
21 effectuate the purposes of this [†]chapter[†]."



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

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

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S.B. NO. 409

Report Title:

County Powers; Invasive Species

Description:

Allows each county to enact and enforce ordinances necessary to prevent, investigate, control, or eradicate invasive species on any public or private premises within the limits of the county.

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

