
A BILL FOR AN ACT

RELATING TO WASTEWATER.

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;



(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;



(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 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;



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;



- 1 (B) Regulate and control the location and quality of
- 2 all appliances necessary to the furnishing of
- 3 water, heat, light, power, telephone, and
- 4 telecommunications service to the county;
- 5 (C) Acquire, regulate, and control any and all
- 6 appliances for the sprinkling and cleaning of the
- 7 streets and the public ways, and for flushing the
- 8 sewers; and
- 9 (D) Open, close, construct, or maintain county
- 10 highways or charge toll on county highways;
- 11 provided that all revenues received from a toll
- 12 charge shall be used for the construction or
- 13 maintenance of county highways;
- 14 (20) Each county shall have the power to regulate the
- 15 renting, subletting, and rental conditions of property
- 16 for places of abode by ordinance;
- 17 (21) Unless otherwise provided by law, each county shall
- 18 have the power to establish by ordinance the order of
- 19 succession of county officials in the event of a
- 20 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]:

4 (A) Establish and maintain waterworks and sewer
5 works; [~~to collect~~]

6 (B) Implement a sewer monitoring program that
7 includes the inspection of sewer laterals that
8 connect to county sewers, when those laterals are
9 located on public or private property, after
10 providing a property owner not less than ten
11 calendar days' written notice, to detect
12 saltwater infiltration, any other law to the
13 contrary notwithstanding;

14 (C) Compel an owner of private property upon which is
15 located any sewer lateral that connects to a
16 county sewer to inspect that lateral for
17 saltwater infiltration and to perform repairs as
18 necessary;

19 (D) Collect rates for water supplied to consumers and
20 for the use of sewers; [~~to install~~]



1 (E) Install water meters whenever deemed expedient;
2 provided that owners of premises having vested
3 water rights under existing laws appurtenant to
4 the premises shall not be charged for the
5 installation or use of the water meters on the
6 premises; [~~to take~~] and

7 (F) Take over from the State existing waterworks
8 systems, including water rights, pipelines, and
9 other appurtenances belonging thereto, and sewer
10 systems, and to enlarge, develop, and improve the
11 same;

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



1 not be a prerequisite for any civil fine or
2 injunctive relief ordered by the circuit court;
3 (B) Each county by ordinance may provide for the
4 addition of any unpaid civil fines, ordered by
5 any court of competent jurisdiction, to any
6 taxes, fees, or charges, with the exception of
7 fees or charges for water for residential use and
8 sewer charges, collected by the county. Each
9 county by ordinance may also provide for the
10 addition of any unpaid administratively imposed
11 civil fines, which remain due after all judicial
12 review rights under section 91-14 are exhausted,
13 to any taxes, fees, or charges, with the
14 exception of water for residential use and sewer
15 charges, collected by the county. The ordinance
16 shall specify the administrative procedures for
17 the addition of the unpaid civil fines to the
18 eligible taxes, fees, or charges and may require
19 hearings or other proceedings. After addition of
20 the unpaid civil fines to the taxes, fees, or
21 charges, the unpaid civil fines shall not become



1 a part of any taxes, fees, or charges. The
2 county by ordinance may condition the issuance or
3 renewal of a license, approval, or permit for
4 which a fee or charge is assessed, except for
5 water for residential use and sewer charges, on
6 payment of the unpaid civil fines. Upon
7 recordation of a notice of unpaid civil fines in
8 the bureau of conveyances, the amount of the
9 civil fines, including any increase in the amount
10 of the fine which the county may assess, shall
11 constitute a lien upon all real property or
12 rights to real property belonging to any person
13 liable for the unpaid civil fines. The lien in
14 favor of the county shall be subordinate to any
15 lien in favor of any person recorded or
16 registered prior to the recordation of the notice
17 of unpaid civil fines and senior to any lien
18 recorded or registered after the recordation of
19 the notice. The lien shall continue until the
20 unpaid civil fines are paid in full or until a
21 certificate of release or partial release of the



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



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



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 shall be reviewed by the
5 county agency that imposed the civil fines to
6 determine the appropriateness of the amount of
7 the civil fines that accrued while the appeal
8 proceedings were pending. In its review of the
9 amount of the accrued fines, the county agency
10 may consider:

- 11 (i) The nature and egregiousness of the
12 violation;
- 13 (ii) The duration of the violation;
- 14 (iii) The number of recurring and other similar
15 violations;
- 16 (iv) Any effort taken by the violator to correct
17 the violation;
- 18 (v) The degree of involvement in causing or
19 continuing the violation;
- 20 (vi) Reasons for any delay in the completion of
21 the appeal; and



1 (vii) Other extenuating circumstances.

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

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



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

6 (25) Any law to the contrary notwithstanding, any county
7 mayor, by executive order, may exempt donors, provider
8 agencies, homeless facilities, and any other program
9 for the homeless under part XVII of chapter 346 from
10 real property taxes, water and sewer development fees,
11 rates collected for water supplied to consumers and
12 for use of sewers, and any other county taxes,
13 charges, or fees; provided that any county may enact
14 ordinances to regulate and grant the exemptions
15 granted by this paragraph;

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

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

20 SECTION 2. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



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

2

INTRODUCED BY:

Nicole E. Lounsbury

Andy Evans

Chen Lell

Richard L.

Blakely

[Signature]

J.P. L.

[Signature]

[Signature]

[Signature]

JAN 19 2018



H.B. NO. 2043

Report Title:

Counties; Sewers; Laterals; Inspections; Repairs

Description:

Authorizes counties to inspect sewer laterals located on private property under certain conditions. Authorizes counties to compel property owners to inspect sewer laterals under certain conditions and to make repairs as necessary.

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

