C.D. 1

A BILL FOR AN ACT

RELATING TO STORMWATER FEES.

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

SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is
 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

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1		proper for the protection and safeguarding of life,
2		health, and property;
3	(3)	Each county shall have the power to enforce all claims
4		on behalf of the county and approve all lawful claims
5		against the county, but shall be prohibited from
6		entering into, granting, or making in any manner any
7		contract, authorization, allowance payment, or
8		liability contrary to the provisions of any county
9		charter or general law;
10	(4)	Each county shall have the power to make contracts and
11		to do all things necessary and proper to carry into
12		execution all powers vested in the county or any
13		county officer;
14	(5)	Each county shall have the power to:
15		(A) Maintain channels, whether natural or artificial,
16		including their exits to the ocean, in suitable
17		condition to carry off storm waters;
18		(B) Remove from the channels, and from the shores and
19		beaches, any debris that is likely to create an
20		unsanitary condition or become a public nuisance;
21	,	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; provided that no county shall

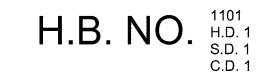
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1		charge against or collect user fees from the
2		department of transportation in excess of
3		\$1,500,000 in the aggregate per year; provided
4		further that no services shall be denied to the
5		department of transportation by reason of
6		nonpayment of the fees;
7	(6)	Each county shall have the power to exercise the power
8		of condemnation by eminent domain when it is in the
9		public interest to do so;
10	(7)	Each county shall have the power to exercise
11		regulatory powers over business activity as are
12		assigned to them by chapter 445 or other general law;
13	(8)	Each county shall have the power to fix the fees and
14		charges for all official services not otherwise
15		provided for;
16	(9)	Each county shall have the power to provide by
17		ordinance assessments for the improvement or
18		maintenance of districts within the county;
19	(10)	Except as otherwise provided, no county shall have the
20		power to give or loan credit to, or in aid of, any

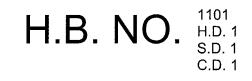
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1		person or corporation, directly or indirectly, except
2		for a public purpose;
3	(11)	Where not within the jurisdiction of the public
4		utilities commission, each county shall have the power
5		to regulate by ordinance the operation of motor
6		vehicle common carriers transporting passengers within
7		the county and adopt and amend rules the county deems
8		necessary for the public convenience and necessity;
9	(12)	Each county shall have the power to enact and enforce
10		ordinances necessary to prevent or summarily remove
11		public nuisances and to compel the clearing or removal
12		of any public nuisance, refuse, and uncultivated
13		undergrowth from streets, sidewalks, public places,
14		and unoccupied lots. In connection with these powers,
15		each county may impose and enforce liens upon the
16		property for the cost to the county of removing and
17		completing the necessary work where the property
18		owners fail, after reasonable notice, to comply with
19		the ordinances. The authority provided by this
20		paragraph shall not be self-executing, but shall
21		become fully effective within a county only upon the

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1 enactment or adoption by the county of appropriate and 2 particular laws, ordinances, or rules defining "public 3 nuisances" with respect to each county's respective 4 circumstances. The counties shall provide the 5 property owner with the opportunity to contest the summary action and to recover the owner's property; 6 7 (13)Each county shall have the power to enact ordinances 8 deemed necessary to protect health, life, and property, and to preserve the order and security of 9 10 the county and its inhabitants on any subject or 11 matter not inconsistent with, or tending to defeat, 12 the intent of any state statute where the statute does not disclose an express or implied intent that the 13 14 statute shall be exclusive or uniform throughout the 15 State; 16 (14) Each county shall have the power to: 17 (A) Make and enforce within the limits of the county 18 all necessary ordinances covering all: 19 (i) Local police matters; 20 Matters of sanitation; (ii) 21 (iii) Matters of inspection of buildings;

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1		(iv)	Matters of condemnation of unsafe
2			structures, plumbing, sewers, dairies, milk,
3			fish, and morgues; and
4		(v)	Matters of the collection and disposition of
5			rubbish and garbage;
6	(B)	Prov	ide exemptions for homeless facilities and
7		any	other program for the homeless authorized by
8		part	XVII of chapter 346, for all matters under
9		this	paragraph;
10	(C)	Арро	int county physicians and sanitary and other
11		insp	ectors as necessary to carry into effect
12		ordi	nances made under this paragraph, who shall
13		have	the same power as given by law to agents of
14		the	department of health, subject only to
15		limi	tations placed on them by the terms and
16		cond	itions of their appointments; and
17	(D)	Fix	a penalty for the violation of any ordinance,
18		whic	h penalty may be a misdemeanor, petty
19		misd	emeanor, or violation as defined by general
20		law;	



1	(15)	Each county shall have the power to provide public
2		pounds; to regulate the impounding of stray animals
3		and fowl, and their disposition; and to provide for
4		the appointment, powers, duties, and fees of animal
5		control officers;
6	(16)	Each county shall have the power to purchase and
7		otherwise acquire, lease, and hold real and personal
8		property within the defined boundaries of the county
9		and to dispose of the real and personal property as
10		the interests of the inhabitants of the county may
11		require, except that:
12		(A) Any property held for school purposes may not be
13		disposed of without the consent of the
14		superintendent of education;
15		(B) No property bordering the ocean shall be sold or
16		otherwise disposed of; and
17		(C) All proceeds from the sale of park lands shall be
18		expended only for the acquisition of property for
19		park or recreational purposes;
20	(17)	Each county shall have the power to provide by charter
21		for the prosecution of all offenses and to prosecute

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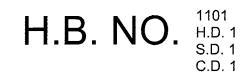
1		for o	offenses against the laws of the State under the
2		auth	ority of the attorney general of the State;
3	(18)	Each	county shall have the power to make
4		appro	opriations in amounts deemed appropriate from any
5		mone	ys in the treasury, for the purpose of:
6		(A)	Community promotion and public celebrations;
7		(B)	The entertainment of distinguished persons as may
8			from time to time visit the county;
9		(C)	The entertainment of other distinguished persons,
10			as well as, public officials when deemed to be in
11			the best interest of the community; and
12		(D)	The rendering of civic tribute to individuals
13			who, by virtue of their accomplishments and
14			community service, merit civic commendations,
15			recognition, or remembrance;
16	(19)	Each	county shall have the power to:
17		(A)	Construct, purchase, take on lease, lease,
18			sublease, or in any other manner acquire, manage,
19			maintain, or dispose of buildings for county
20			purposes, sewers, sewer systems, pumping
21			stations, waterworks, including reservoirs,

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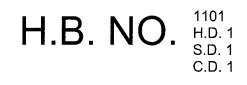
1			wells, pipelines, and other conduits for
2			distributing water to the public, lighting
3			plants, and apparatus and appliances for lighting
4			streets and public buildings, and manage,
5			regulate, and control the same;
6		(B)	Regulate and control the location and quality of
7			all appliances necessary to the furnishing of
8			water, heat, light, power, telephone, and
9			telecommunications service to the county;
10		(C)	Acquire, regulate, and control any and all
11			appliances for the sprinkling and cleaning of the
12			streets and the public ways, and for flushing the
13			sewers; and
14		(D)	Open, close, construct, or maintain county
15			highways or charge toll on county highways;
16			provided that all revenues received from a toll
17			charge shall be used for the construction or
18			maintenance of county highways;
19	(20)	Each	county shall have the power to regulate the
20		rent	ing, subletting, and rental conditions of property
21		for	places of abode by ordinance;

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1	(21)	Unle	ss otherwise provided by law, each county shall
2		have	the power to establish by ordinance the order of
3		succ	ession of county officials in the event of a
4		mili	tary or civil disaster;
5	(22)	Each	county shall have the power to sue and be sued in
6		its	corporate name;
7	(23)	Each	county shall have the power to:
8		(A)	Establish and maintain waterworks and sewer
9			works;
10		(B)	Implement a sewer monitoring program that
11			includes the inspection of sewer laterals that
12			connect to county sewers, when those laterals are
13			located on public or private property, after
14			providing a property owner not less than ten
15			calendar days' written notice, to detect leaks
16			from laterals, infiltration, and inflow, any
17			other law to the contrary notwithstanding;
18		(C)	Compel an owner of private property upon which is
19			located any sewer lateral that connects to a
20			county sewer to inspect that lateral for leaks,



1		infiltration, and inflow and to perform repairs
2		as necessary;
3	(D)	Collect rates for water supplied to consumers and
4		for the use of sewers;
5	(E)	Install water meters whenever deemed expedient;
6		provided that owners of premises having vested
7		water rights under existing laws appurtenant to
8		the premises shall not be charged for the
9		installation or use of the water meters on the
10		premises; [and]
11	(F)	Take over from the State existing waterworks
12		systems, including water rights, pipelines, and
13		other appurtenances belonging thereto, and sewer
14		systems, and to enlarge, develop, and improve the
15		same; and
16	(G)	For purposes of subparagraphs (B) and (C):
17		(i) "Infiltration" means groundwater, rainwater,
18		and saltwater that enters the county sewer
19		system through cracked, broken, or defective
20		sewer laterals; and

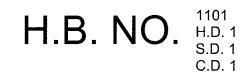
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1		(ii) "Inflow" means non-sewage entering the
2		county sewer system via inappropriate or
3		illegal connections;
4	(24) (A	Each county may impose civil fines, in addition
5		to criminal penalties, for any violation of
6		county ordinances or rules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

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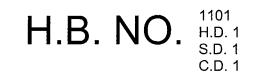
1 county by ordinance may also provide for the 2 addition of any unpaid administratively imposed 3 civil fines, which remain due after all judicial 4 review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the 5 exception of water for residential use and sewer 6 7 charges,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





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

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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 civil fines are added to the taxes, fees, or 6 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 by the county. The fine may be up to \$1,000 or 18 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



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1		places graffiti on any real or personal property
2		owned, managed, or maintained by the county shall
3		be jointly and severally liable with the minor
4		for any civil fines imposed hereunder. Any such
5		fine may be administratively imposed after an
6		opportunity for a hearing under chapter 91, but
7		such a proceeding shall not be a prerequisite for
8		any civil fine ordered by any court. As used in
9		this subparagraph, "graffiti" means any
10		unauthorized drawing, inscription, figure, or
11		mark of any type intentionally created by paint,
12		ink, chalk, dye, or similar substances;
13	(D)	At the completion of an appeal in which the
14		county's enforcement action is affirmed and upon
15		correction of the violation if requested by the
16		violator, the case shall be reviewed by the
17		county agency that imposed the civil fines to
18		determine the appropriateness of the amount of
19		the civil fines that accrued while the appeal
20		proceedings were pending. In its review of the

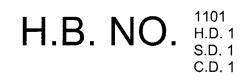


1	amou	nt of the accrued fines, the county agency
2	may	consider:
3	(i)	The nature and egregiousness of the
4		violation;
5	(ii)	The duration of the violation;
6	(iii)	The number of recurring and other similar
7		violations;
8	(iv)	Any effort taken by the violator to correct
9		the violation;
10	(V)	The degree of involvement in causing or
11		continuing the violation;
12	(vi)	Reasons for any delay in the completion of
13		the appeal; and
14	(vii)	Other extenuating circumstances.
15	The d	civil fine that is imposed by administrative
16	orde	r after this review is completed and the
17	viola	ation is corrected shall be subject to
18	judio	cial review, notwithstanding any provisions
19	for a	administrative review in county charters;
20	(E) After	r completion of a review of the amount of
21	accru	led civil fine by the county agency that



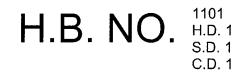
1			imposed the fine, the amount of the civil fine
2			determined appropriate, including both the
3			initial civil fine and any accrued daily civil
4			fine, shall immediately become due and
5			collectible following reasonable notice to the
6			violator. If no review of the accrued civil fine
7			is requested, the amount of the civil fine, not
8			to exceed the total accrual of civil fine prior
9			to correcting the violation, shall immediately
10			become due and collectible following reasonable
11			notice to the violator, at the completion of all
12			appeal proceedings; and
13		(F)	If no county agency exists to conduct appeal
14			proceedings for a particular civil fine action
15			taken by the county, then one shall be
16			established by ordinance before the county shall
17			impose the civil fine;
18	(25)	Any	law to the contrary notwithstanding, any county
19		mayo	r, by executive order, may exempt donors, provider
20		agen	cies, homeless facilities, and any other program
21		for	the homeless under part XVII of chapter 346 from

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1		real property taxes, water and sewer development fees,
2		rates collected for water supplied to consumers and
3		for use of sewers, and any other county taxes,
4		charges, or fees; provided that any county may enact
5		ordinances to regulate and grant the exemptions
6		granted by this paragraph;
7	(26)	Any county may establish a captive insurance company
8		pursuant to article 19, chapter 431; and
9	(27)	Each county shall have the power to enact and enforce
10		ordinances regulating towing operations."
11	SECT	ION 2. Statutory material to be repealed is bracketed
12	and stric	ken. New statutory material is underscored.
13	SECT	ION 3. This Act shall take effect upon its approval.





Report Title:

Stormwater Fees; Department of Transportation; Aggregate Fee Cap Amount

Description:

Establishes a fee cap amount for county stormwater user fees that may be charged against or collected from the Department of Transportation of \$1,500,000 in the aggregate per year. Prohibits any county from denying services to the Department of Transportation by reason of nonpayment of user fees. (CD1)

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

