

JAN 20 2023

A BILL FOR AN ACT

RELATING TO THE COUNTIES.

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



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;



- 1 (6) Each county shall have the power to exercise the power
2 of condemnation by eminent domain when it is in the
3 public interest to do so;
- 4 (7) Each county shall have the power to exercise
5 regulatory powers over business activity as are
6 assigned to them by chapter 445 or other general law;
- 7 (8) Each county shall have the power to fix the fees and
8 charges for all official services not otherwise
9 provided for;
- 10 (9) Each county shall have the power to provide by
11 ordinance assessments for the improvement or
12 maintenance of districts within the county;
- 13 (10) Except as otherwise provided, no county shall have the
14 power to give or loan credit to, or in aid of, any
15 person or corporation, directly or indirectly, except
16 for a public purpose;
- 17 (11) Where not within the jurisdiction of the public
18 utilities commission, each county shall have the power
19 to regulate by ordinance the operation of motor
20 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 provided that a county may proceed with a power of
2 sale of the property after all notices, orders, and
3 appeal proceedings are exhausted;

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

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

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

- 16 (i) Local police matters;
- 17 (ii) Matters of sanitation;
- 18 (iii) Matters of inspection of buildings;
- 19 (iv) Matters of condemnation of unsafe
20 structures, plumbing, sewers, dairies, milk,
21 fish, and morgues; and



1 (v) Matters of the collection and disposition of
2 rubbish and garbage;

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

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

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

18 (15) Each county shall have the power to provide public
19 pounds; to regulate the impounding of stray animals
20 and fowl, and their disposition; and to provide for



1 the appointment, powers, duties, and fees of animal
2 control officers;

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

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

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

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

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



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

4 (A) Community promotion and public celebrations;

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

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

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

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

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



1 plants, and apparatus and appliances for lighting
2 streets and public buildings, and manage,
3 regulate, and control the same;

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

8 (C) Acquire, regulate, and control any and all
9 appliances for the sprinkling and cleaning of the
10 streets and the public ways, and for flushing the
11 sewers; and

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

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

20 (21) Unless otherwise provided by law, each county shall
21 have the power to establish by ordinance the order of



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



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



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



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



1 rights to real property belonging to any person
2 liable for the unpaid civil fines. The lien in
3 favor of the county shall be subordinate to any
4 lien in favor of any person recorded or
5 registered prior to the recordation of the notice
6 of unpaid civil fines and senior to any lien
7 recorded or registered after the recordation of
8 the notice. The lien shall continue until the
9 unpaid civil fines are paid in full or until a
10 certificate of release or partial release of the
11 lien, prepared by the county at the owner's
12 expense, is recorded. The notice of unpaid civil
13 fines shall state the amount of the fine as of
14 the date of the notice and maximum permissible
15 daily increase of the fine. The county shall not
16 be required to include a social security number,
17 state general excise taxpayer identification
18 number, or federal employer identification number
19 on the notice. Recordation of the notice in the
20 bureau of conveyances shall be deemed, at [~~such~~]
21 that time, for all purposes and without any



1 further action, to procure a lien on land
2 registered in land court under chapter 501.
3 After the unpaid civil fines are added to the
4 taxes, fees, or charges as specified by county
5 ordinance, the unpaid civil fines shall be deemed
6 immediately due, owing, and delinquent and may be
7 collected in any lawful manner. The procedure
8 for collection of unpaid civil fines authorized
9 in this paragraph shall be in addition to any
10 other procedures for collection available to the
11 State and county by law or rules of the courts;

12 (C) Each county may impose civil fines upon any
13 person who places graffiti on any real or
14 personal property owned, managed, or maintained
15 by the county. The fine may be up to \$1,000 or
16 may be equal to the actual cost of having the
17 damaged property repaired or replaced. The
18 parent or guardian having custody of a minor who
19 places graffiti on any real or personal property
20 owned, managed, or maintained by the county shall
21 be jointly and severally liable with the minor



1 for any civil fines imposed hereunder. Any
2 [~~such~~] fine may be administratively imposed after
3 an opportunity for a hearing under chapter 91,
4 but [~~such~~] a proceeding shall not be a
5 prerequisite for any civil fine ordered by any
6 court. As used in this subparagraph, "graffiti"
7 means any unauthorized drawing, inscription,
8 figure, or mark of any type intentionally created
9 by paint, ink, chalk, dye, or similar substances;

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

20 (i) The nature and egregiousness of the
21 violation;



- 1 (ii) The duration of the violation;
- 2 (iii) The number of recurring and other similar
- 3 violations;
- 4 (iv) Any effort taken by the violator to correct
- 5 the violation;
- 6 (v) The degree of involvement in causing or
- 7 continuing the violation;
- 8 (vi) Reasons for any delay in the completion of
- 9 the appeal; and
- 10 (vii) Other extenuating circumstances.

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

16 (E) After completion of a review of the amount of
17 accrued civil fine by the county agency that
18 imposed the fine, the amount of the civil fine
19 determined appropriate, including both the
20 initial civil fine and any accrued daily civil
21 fine, shall immediately become due and



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

9 (F) If no county agency exists to conduct appeal
10 proceedings for a particular civil fine action
11 taken by the county, then one shall be
12 established by ordinance before the county shall
13 impose the civil fine[+]. After all notices,
14 orders, and appeal proceedings are exhausted, a
15 county may satisfy all unpaid civil fines through
16 the power of sale on the real property subject to
17 a recorded lien. A power of sale shall become
18 fully effective within a county upon the
19 enactment or adoption by the county of
20 appropriate and particular laws, ordinances, or
21 rules establishing the power of sale;



S.B. NO. 875

Report Title:

Counties; Civil Fines; Real Property; Power of Sale

Description:

Authorizes counties, after adoption of an ordinance, to sell private property after all notices, orders, and appeal proceedings are exhausted and to use those revenues to pay unpaid civil fines related to that property.

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

