
A BILL FOR AN ACT

RELATING TO REAL PROPERTY LIENS.

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

1 SECTION 1. Chapter 507, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART REAL PROPERTY

5 §507-A Definitions. As used in this part, unless a
6 different meaning is plainly intended:

7 "Land use law" means any law, constitutional provision,
8 statute, ordinance, or rule that regulates the use or
9 development of land in the State, including laws related to
10 zoning, district classification, general plan designation,
11 permits, permitted and prohibited uses, coastal zone and
12 shoreline management, covenants, conditions, and easements.
13 "Land use law" includes the laws found in chapters 205, 205A,
14 343, and 508C and other laws regulating the use or development
15 of land in the State and rules adopted pursuant thereto.

16 "Lien" means the lien provided in section 507-B.



1 **§507-B Lien on real property; violation of land use laws.**

2 In addition to any other remedy provided by law, the State or
3 any county in which the affected real property is situated may
4 attach and record a lien on the real property for any unpaid
5 civil fines resulting from a violation of a land use law in
6 connection with the property. Any administratively imposed
7 civil fine for the violation shall not be collected until after
8 an opportunity for a hearing under chapter 91. Any appeal shall
9 be filed within thirty days from the date of the final written
10 decision. These proceedings shall not be a prerequisite to any
11 civil fine or injunctive relief ordered by the circuit court.
12 After all notices, orders, and appeal proceedings, if any, are
13 exhausted, the State or applicable county, or any agency
14 thereof, may satisfy all unpaid civil fines arising from the
15 violation of a land use law through the power of sale on the
16 real property subject to the recorded lien.

17 **§507-C Priority of lien.** (a) A lien pursuant to section
18 507-B arises at the time all notices, orders, and appeal
19 proceedings, if any, are exhausted and is a paramount lien on
20 the real property against all parties, whether their interest
21 arose before or after that time; provided that the lien shall:



1 (1) Be subordinate to any lien for a tax debt due to the
2 State by the owner of the real property under section
3 231-33; and

4 (2) Not be valid against a mortgagee or purchaser of real
5 property, or the lien of a judgment creditor upon the
6 real property, whose interest arose before the
7 recording by the state or county agency of the lien
8 pursuant to section 507-B.

9 (b) For the purposes of this section:

10 "Owner" means the owner of the real property or any person
11 having any right, title, or interest in the real property that
12 may be sold under legal process.

13 "Person" includes natural persons, partnerships,
14 corporations, firms, unincorporated associations, joint
15 ventures, and any other party recognized at law as a person.

16 **§507-D Rule-making authority.** The state or county agency
17 imposing civil fines for the violation of a land use law, as
18 appropriate, may adopt rules pursuant to chapter 91 to
19 administer this part."

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



1 **"§46-1.5 General powers and limitation of the counties.**

2 Subject to general law, each county shall have the following
3 powers and shall be subject to the following liabilities and
4 limitations:

5 (1) Each county shall have the power to frame and adopt a
6 charter for its own self-government that shall
7 establish the county executive, administrative, and
8 legislative structure and organization, including but
9 not limited to the method of appointment or election
10 of officials, their duties, responsibilities, and
11 compensation, and the terms of their office;

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

18 (3) Each county shall have the power to enforce all claims
19 on behalf of the county and approve all lawful claims
20 against the county, but shall be prohibited from
21 entering into, granting, or making in any manner any



1 contract, authorization, allowance payment, or
2 liability contrary to the provisions of any county
3 charter or general law;

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

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

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

12 (B) Remove from the channels, and from the shores and
13 beaches, any debris that is likely to create an
14 unsanitary condition or become a public nuisance;
15 provided that, to the extent any of the foregoing
16 work is a private responsibility, the
17 responsibility may be enforced by the county in
18 lieu of the work being done at public expense;

19 (C) Construct, acquire by gift, purchase, or by the
20 exercise of eminent domain, reconstruct, improve,
21 better, extend, and maintain projects or



1 undertakings for the control of and protection
2 against floods and flood waters, including the
3 power to drain and rehabilitate lands already
4 flooded;

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

13 (E) Establish and charge user fees to create and
14 maintain any stormwater management system or
15 infrastructure;

16 (6) Each county shall have the power to exercise the power
17 of condemnation by eminent domain when it is in the
18 public interest to do so;

19 (7) Each county shall have the power to exercise
20 regulatory powers over business activity as are
21 assigned to them by chapter 445 or other general law;



- 1 (8) Each county shall have the power to fix the fees and
2 charges for all official services not otherwise
3 provided for;
- 4 (9) Each county shall have the power to provide by
5 ordinance assessments for the improvement or
6 maintenance of districts within the county;
- 7 (10) Except as otherwise provided, no county shall have the
8 power to give or loan credit to, or in aid of, any
9 person or corporation, directly or indirectly, except
10 for a public purpose;
- 11 (11) Where not within the jurisdiction of the public
12 utilities commission, each county shall have the power
13 to regulate by ordinance the operation of motor
14 vehicle common carriers transporting passengers within
15 the county and adopt and amend rules the county deems
16 necessary for the public convenience and necessity;
- 17 (12) Each county shall have the power to enact and enforce
18 ordinances necessary to prevent or summarily remove
19 public nuisances and to compel the clearing or removal
20 of any public nuisance, refuse, and uncultivated
21 undergrowth from streets, sidewalks, public places,



1 and unoccupied lots. In connection with these powers,
2 each county may impose and enforce liens upon the
3 property for the cost to the county of removing and
4 completing the necessary work where the property
5 owners fail, after reasonable notice, to comply with
6 the ordinances. The authority provided by this
7 paragraph shall not be self-executing, but shall
8 become fully effective within a county only upon the
9 enactment or adoption by the county of appropriate and
10 particular laws, ordinances, or rules defining "public
11 nuisances" with respect to each county's respective
12 circumstances. The counties shall provide the
13 property owner with the opportunity to contest the
14 summary action and to recover the owner's property;
15 provided that a county may proceed with a power of
16 sale of the property after all notices, orders, and
17 appeal proceedings are exhausted;

- 18 (13) Each county shall have the power to enact ordinances
19 deemed necessary to protect health, life, and
20 property, and to preserve the order and security of
21 the county and its inhabitants on any subject or



1 matter not inconsistent with, or tending to defeat,
2 the intent of any state statute where the statute does
3 not disclose an express or implied intent that the
4 statute shall be exclusive or uniform throughout the
5 State;

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

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

9 (i) Local police matters;

10 (ii) Matters of sanitation;

11 (iii) Matters of inspection of buildings;

12 (iv) Matters of condemnation of unsafe
13 structures, plumbing, sewers, dairies, milk,
14 fish, and morgues; and

15 (v) Matters of the collection and disposition of
16 rubbish and garbage;

17 (B) Provide exemptions for homeless facilities and
18 any other program for the homeless authorized by
19 part XVII of chapter 346, for all matters under
20 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



- 1 the interests of the inhabitants of the county may
2 require[, ~~except~~] provided that:
- 3 (A) Any property held for school purposes [~~may~~] shall
4 not be disposed of without the consent of the
5 superintendent of education;
- 6 (B) No property bordering the ocean shall be sold or
7 otherwise disposed of; and
- 8 (C) All proceeds from the sale of park lands shall be
9 expended only for the acquisition of property for
10 park or recreational purposes;
- 11 (17) Each county shall have the power to provide by charter
12 for the prosecution of all offenses and to prosecute
13 for offenses against the laws of the State under the
14 authority of the attorney general of the State;
- 15 (18) Each county shall have the power to make
16 appropriations in amounts deemed appropriate from any
17 moneys in the treasury, for the purpose of:
- 18 (A) Community promotion and public celebrations;
19 (B) The entertainment of distinguished persons as may
20 from time to time visit the county;



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

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

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

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

19 (B) Regulate and control the location and quality of
20 all appliances necessary to the furnishing of



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



- 1 (A) Establish and maintain waterworks and sewer
2 works;
- 3 (B) Implement a sewer monitoring program that
4 includes the inspection of sewer laterals that
5 connect to county sewers, when those laterals are
6 located on public or private property, after
7 providing a property owner [~~not~~] no less than ten
8 calendar days' written notice, to detect leaks
9 from laterals, infiltration, and inflow, any
10 other law to the contrary notwithstanding;
- 11 (C) Compel an owner of private property upon which is
12 located any sewer lateral that connects to a
13 county sewer to inspect that lateral for leaks,
14 infiltration, and inflow and to perform repairs
15 as necessary;
- 16 (D) Collect rates for water supplied to consumers and
17 for the use of sewers;
- 18 (E) Install water meters whenever deemed expedient;
19 provided that owners of premises having vested
20 water rights under existing laws appurtenant to
21 the premises shall not be charged for the



1 installation or use of the water meters on the
2 premises; and

3 (F) Take over from the State existing waterworks
4 systems, including water rights, pipelines, and
5 other appurtenances belonging thereto, and sewer
6 systems, and to enlarge, develop, and improve the
7 same;

8 [~~(G)~~] For purposes of [~~subparagraphs (B) and (C):~~] this
9 paragraph:

10 [~~(i)~~] "Infiltration" means groundwater, rainwater,
11 and saltwater that enters the county sewer
12 system through cracked, broken, or defective
13 sewer laterals[~~and~~].

14 [~~(ii)~~] "Inflow" means non-sewage entering the
15 county sewer system via inappropriate or
16 illegal connections[~~and~~].

17 (24) (A) Each county may impose civil fines, in addition
18 to criminal penalties, for any violation of
19 county ordinances or rules after reasonable
20 notice and requests to correct or cease the
21 violation have been made upon the violator. Any



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

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



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



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



1 immediately due, owing, and delinquent and may be
2 collected in any lawful manner. The procedure
3 for collection of unpaid civil fines authorized
4 in this paragraph shall be in addition to any
5 other procedures for collection available to the
6 State and county by law or rules of the courts;

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



1 this subparagraph, "graffiti" means any
2 unauthorized drawing, inscription, figure, or
3 mark of any type intentionally created by paint,
4 ink, chalk, dye, or similar substances;

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

- 15 (i) The nature and egregiousness of the
16 violation;
- 17 (ii) The duration of the violation;
- 18 (iii) The number of recurring and other similar
19 violations;
- 20 (iv) Any effort taken by the violator to correct
21 the violation;



- 1 (v) The degree of involvement in causing or
- 2 continuing the violation;
- 3 (vi) Reasons for any delay in the completion of
- 4 the appeal; and
- 5 (vii) Other extenuating circumstances.

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

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



1 immediately become due and collectible following
2 reasonable notice to the violator, at the
3 completion of all appeal proceedings[+]. After
4 all notices, orders, and appeal proceedings are
5 exhausted, a county may satisfy all unpaid civil
6 finer arising from the violation of a land use
7 law, ordinance, or rule through the power of sale
8 on the real property subject to a recorded lien.
9 A power of sale shall become fully effective
10 within a county upon the enactment or adoption by
11 the county of appropriate and particular laws,
12 ordinances, or rules establishing the power of
13 sale; and

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

19 (25) Any law to the contrary notwithstanding, any county
20 mayor, by executive order, may exempt donors, provider
21 agencies, homeless facilities, and any other program



1 for the homeless under part XVII of chapter 346 from
2 real property taxes, water and sewer development fees,
3 rates collected for water supplied to consumers and
4 for use of sewers, and any other county taxes,
5 charges, or fees; provided that any county may enact
6 ordinances to regulate and grant the exemptions
7 granted by this paragraph;

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

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

12 SECTION 3. In codifying the new sections added by section
13 1 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 4. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun before its effective date.

19 SECTION 5. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect on June 30, 3000.



Report Title:

Civil Fines; Land Use Law Violations; Lien; Sale of Real Property; State; Counties

Description:

Authorizes the State and the counties to place liens on real properties for unpaid civil fines resulting from violations of land use laws. Authorizes the State and counties, subject to adoption of appropriate and particular laws or rules establishing the power of sale, to sell properties after all notices, orders, and appeal proceedings, if any, are exhausted and use those revenues to pay unpaid civil fines related to property. Effective 6/30/3000. (HD2)

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

