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# A BILL FOR AN ACT

RELATING TO THE COUNTIES.

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

1           SECTION 1. The legislature finds that public nuisances  
2 caused by uncaring or absent property owners can pose  
3 significant risks to public health, safety, and neighboring  
4 properties. Chronically unaddressed hazards left by a resident  
5 threaten communities and compromise overall public welfare.

6           The legislature further finds that despite the issuance of  
7 notices of violation and the imposition of punitive measures,  
8 some severe public nuisances persist without resolution. Using  
9 the city and county of Honolulu as an example, public nuisance  
10 is defined under its ordinances and recent enforcement  
11 enhancements were made with ordinance 21-29. This ordinance  
12 authorizes administrative liens on properties when civil fines  
13 exceed \$150,000 or remain outstanding for over five years.  
14 While these steps provide important tools, additional mechanisms  
15 at the state level are necessary to address situations where all  
16 other remedies fail to achieve compliance.



1           The legislature additionally finds that non-judicial  
2 foreclosure for delinquent property taxes is already permitted.  
3 Extending similar authority to address persistent public safety  
4 and health hazards aligns with the government's duty to protect  
5 the community from significant risks. Providing counties with  
6 the ability to enforce public nuisance laws through foreclosure  
7 or other appropriate means as a last resort will safeguard  
8 residents and prevent widespread harm.

9           The purpose of this Act is to authorize the counties to  
10 implement additional enforcement mechanisms to address severe  
11 public nuisances that remain unmitigated after the exhaustion of  
12 all other existing remedies.

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

15           "**§46-1.5 General powers and limitation of the counties.**

16 Subject to general law, each county shall have the following  
17 powers and shall be subject to the following liabilities and  
18 limitations:

19           (1) Each county shall have the power to frame and adopt a  
20 charter for its own self-government that shall  
21 establish the county executive, administrative, and



1 legislative structure and organization, including but  
2 not limited to the method of appointment or election  
3 of officials, their duties, responsibilities, and  
4 compensation, and the terms of their office;

5 (2) Each county shall have the power to provide for and  
6 regulate the marking and lighting of all buildings and  
7 other structures that may be obstructions or hazards  
8 to aerial navigation, so far as may be necessary or  
9 proper for the protection and safeguarding of life,  
10 health, and property;

11 (3) Each county shall have the power to enforce all claims  
12 on behalf of the county and approve all lawful claims  
13 against the county, but shall be prohibited from  
14 entering into, granting, or making in any manner any  
15 contract, authorization, allowance payment, or  
16 liability contrary to the provisions of any county  
17 charter or general law;

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



- 1           (5) Each county shall have the power to:
- 2           (A) Maintain channels, whether natural or artificial,
- 3           including their exits to the ocean, in suitable
- 4           condition to carry off storm waters;
- 5           (B) Remove from the channels, and from the shores and
- 6           beaches, any debris that is likely to create an
- 7           unsanitary condition or become a public nuisance;
- 8           provided that, to the extent any of the foregoing
- 9           work is a private responsibility, the
- 10          responsibility may be enforced by the county in
- 11          lieu of the work being done at public expense;
- 12          (C) Construct, acquire by gift, purchase, or by the
- 13          exercise of eminent domain, reconstruct, improve,
- 14          better, extend, and maintain projects or
- 15          undertakings for the control of and protection
- 16          against floods and flood waters, including the
- 17          power to drain and rehabilitate lands already
- 18          flooded;
- 19          (D) Enact zoning ordinances providing that lands
- 20          deemed subject to seasonable, periodic, or
- 21          occasional flooding shall not be used for



1 residence or other purposes in a manner as to  
2 endanger the health or safety of the occupants  
3 thereof, as required by the Federal Flood  
4 Insurance Act of 1956 (chapter 1025, Public Law  
5 1016); and

6 (E) Establish and charge user fees to create and  
7 maintain any stormwater management system or  
8 infrastructure; provided that no county shall  
9 charge against or collect user fees from the  
10 department of transportation in excess of  
11 \$1,500,000 in the aggregate per year; provided  
12 further that no services shall be denied to the  
13 department of transportation by reason of  
14 nonpayment of the fees;

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

18 (7) Each county shall have the power to exercise  
19 regulatory powers over business activity as are  
20 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 after enactment or adoption by the  
 16 county of appropriate and particular laws, ordinances,  
 17 or rules, a county may proceed with a power of sale of  
 18 the property after all notices, orders, and appeal  
 19 proceedings are exhausted;

20 (13) Each county shall have the power to enact ordinances  
 21 deemed necessary to protect health, life, and



1 property, and to preserve the order and security of  
2 the county and its inhabitants on any subject or  
3 matter not inconsistent with, or tending to defeat,  
4 the intent of any state statute where the statute does  
5 not disclose an express or implied intent that the  
6 statute shall be exclusive or uniform throughout the  
7 State;

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

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

11 (i) Local police matters;

12 (ii) Matters of sanitation;

13 (iii) Matters of inspection of buildings;

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

17 (v) Matters of the collection and disposition of  
18 rubbish and garbage;

19 (B) Provide exemptions for homeless facilities and  
20 any other program for the homeless authorized by



1 part XVII of chapter 346, for all matters under  
2 this paragraph;

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

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

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

19 (16) Each county shall have the power to purchase and  
20 otherwise acquire, lease, and hold real and personal  
21 property within the defined boundaries of the county



1 and to dispose of the real and personal property as  
2 the interests of the inhabitants of the county may  
3 require, except that:

4 (A) Any property held for school purposes may not be  
5 disposed of without the consent of the  
6 superintendent of education;

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

9 (C) All proceeds from the sale of park lands shall be  
10 expended only for the acquisition of property for  
11 park or recreational purposes;

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

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

19 (A) Community promotion and public celebrations;

20 (B) The entertainment of distinguished persons as may  
21 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 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;
- 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; and
- 8 (G) For purposes of subparagraphs (B) and (C):
- 9 (i) "Infiltration" means groundwater, rainwater,  
10 and saltwater that enters the county sewer  
11 system through cracked, broken, or defective  
12 sewer laterals; and
- 13 (ii) "Inflow" means non-sewage entering the  
14 county sewer system via inappropriate or  
15 illegal connections;
- 16 (24) (A) Each county may impose civil fines, in addition  
17 to criminal penalties, for any violation of  
18 county ordinances or rules after reasonable  
19 notice and requests to correct or cease the  
20 violation have been made upon the violator. Any  
21 administratively imposed civil fine shall not be



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

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



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



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



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

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



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

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

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



1           become due and collectible following reasonable  
2           notice to the violator, at the completion of all  
3           appeal proceedings; [~~and~~]

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

9           (G) After all notices, orders, and appeal proceedings  
10           are exhausted, a county may satisfy all unpaid  
11           civil fines through the power of sale on the real  
12           property subject to a recorded lien; provided  
13           that upon the sale of a property, any amount  
14           received in excess of the unpaid civil fines  
15           shall be paid to the property owner. A power of  
16           sale shall become fully effective within a county  
17           upon the enactment or adoption by the county of  
18           appropriate and particular laws, ordinances, or  
19           rules establishing the power of sale;

20           (25) Any law to the contrary notwithstanding, any county  
21           mayor, by executive order, may exempt donors, provider



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

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

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

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect on July 1, 3000.



**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. Requires the county to remit any amounts in excess of the unpaid civil fines to the property owner. Effective 7/1/3000. (HD1)

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

