
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 pursuant to chapter 667 after all
19 notices, orders, and appeal 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~~]; provided that:

4 (A) Any property held for school purposes [~~may~~] shall
5 not be 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 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 [~~and~~].

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;

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~~] that time, for all purposes
17 and without any further action, to procure a lien
18 on land registered in land court under chapter
19 501. After the unpaid civil fines are added to
20 the taxes, fees, or charges as specified by
21 county ordinance, the unpaid civil fines shall be



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

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



1 prerequisite for any civil fine ordered by any
2 court. As used in this subparagraph, "graffiti"
3 means any unauthorized drawing, inscription,
4 figure, or mark of any type intentionally created
5 by paint, ink, chalk, dye, or similar substances;

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

- 16 (i) The nature and egregiousness of the
17 violation;
- 18 (ii) The duration of the violation;
- 19 (iii) The number of recurring and other similar
20 violations;



- 1 (iv) Any effort taken by the violator to correct
 - 2 the violation;
 - 3 (v) The degree of involvement in causing or
 - 4 continuing the violation;
 - 5 (vi) Reasons for any delay in the completion of
 - 6 the appeal; and
 - 7 (vii) Other extenuating circumstances.
- 8 The civil fine that is imposed by administrative
- 9 order after this review is completed and the
- 10 violation is corrected shall be subject to
- 11 judicial review, notwithstanding any provisions
- 12 for administrative review in county charters;
- 13 (E) After completion of a review of the amount of
- 14 accrued civil fine by the county agency that
- 15 imposed the fine, the amount of the civil fine
- 16 determined appropriate, including both the
- 17 initial civil fine and any accrued daily civil
- 18 fine, shall immediately become due and
- 19 collectible following reasonable notice to the
- 20 violator. If no review of the accrued civil fine
- 21 is requested, the amount of the civil fine, not



1 to exceed the total accrual of civil fine [~~prior~~
2 ~~to~~] before correcting the violation, shall
3 immediately become due and collectible following
4 reasonable notice to the violator, at the
5 completion of all appeal proceedings; [~~and~~]

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

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



1 rules establishing the use of power of sale
2 pursuant to chapter 667;

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

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

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

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 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 power of sale laws, ordinances, or rules, 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. (HD2)

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