

---

# A BILL FOR AN ACT

RELATING TO HIGHWAYS.

**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:

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

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

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

(2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards 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; provided that no county shall



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



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



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  
6 summary action and to recover the owner's property;

7 (13) Each county shall have the power to enact ordinances  
8 deemed necessary to protect health, life, and  
9 property, and to preserve the order and security of  
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  
13 not disclose an express or implied intent that the  
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 (ii) Matters of sanitation;

21 (iii) Matters of inspection of buildings;



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

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

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

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

(D) Fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general 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[+] except when the  
17 department of transportation requests the  
18 acquisition of the property for state highway  
19 purposes; and





1 (C) All proceeds from the sale of park lands shall be  
2 expended only for the acquisition of property for  
3 park or recreational purposes;

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

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

11 (A) Community promotion and public celebrations;

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

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

17 (D) The rendering of civic tribute to individuals  
18 who, by virtue of their accomplishments and  
19 community service, merit civic commendations,  
20 recognition, or remembrance;

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



- 1 (A) Construct, purchase, take on lease, lease,  
2 sublease, or in any other manner acquire, manage,  
3 maintain, or dispose of buildings for county  
4 purposes, sewers, sewer systems, pumping  
5 stations, waterworks, including reservoirs,  
6 wells, pipelines, and other conduits for  
7 distributing water to the public, lighting  
8 plants, and apparatus and appliances for lighting  
9 streets and public buildings, and manage,  
10 regulate, and control the same;
- 11 (B) Regulate and control the location and quality of  
12 all appliances necessary to the furnishing of  
13 water, heat, light, power, telephone, and  
14 telecommunications service to the county;
- 15 (C) Acquire, regulate, and control any and all  
16 appliances for the sprinkling and cleaning of the  
17 streets and the public ways, and for flushing the  
18 sewers; and
- 19 (D) Open, close, construct, or maintain county  
20 highways or charge toll on county highways;  
21 provided that all revenues received from a toll



1 charge shall be used for the construction or  
2 maintenance of county highways;

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

6 (21) Unless otherwise provided by law, each county shall  
7 have the power to establish by ordinance the order of  
8 succession of county officials in the event of a  
9 military or civil disaster;

10 (22) Each county shall have the power to sue and be sued in  
11 its corporate name;

12 (23) Each county shall have the power to:

13 (A) Establish and maintain waterworks and sewer  
14 works;

15 (B) Implement a sewer monitoring program that  
16 includes the inspection of sewer laterals that  
17 connect to county sewers, when those laterals are  
18 located on public or private property, after  
19 providing a property owner not less than ten  
20 calendar days' written notice, to detect leaks



1 from laterals, infiltration, and inflow, any  
2 other law to the contrary notwithstanding;

3 (C) Compel an owner of private property upon which is  
4 located any sewer lateral that connects to a  
5 county sewer to inspect that lateral for leaks,  
6 infiltration, and inflow and to perform repairs  
7 as necessary;

8 (D) Collect rates for water supplied to consumers and  
9 for the use of sewers;

10 (E) Install water meters whenever deemed expedient;  
11 provided that owners of premises having vested  
12 water rights under existing laws appurtenant to  
13 the premises shall not be charged for the  
14 installation or use of the water meters on the  
15 premises;

16 (F) Take over from the State existing waterworks  
17 systems, including water rights, pipelines, and  
18 other appurtenances belonging thereto, and sewer  
19 systems, and to enlarge, develop, and improve the  
20 same; and

21 (G) For purposes of subparagraphs (B) and (C):



1 (i) "Infiltration" means groundwater, rainwater,  
2 and saltwater that enters the county sewer  
3 system through cracked, broken, or defective  
4 sewer laterals; and

5 (ii) "Inflow" means non-sewage entering the  
6 county sewer system via inappropriate or  
7 illegal connections;

8 (24) (A) Each county may impose civil fines, in addition  
9 to criminal penalties, for any violation of  
10 county ordinances or rules after reasonable  
11 notice and requests to correct or cease the  
12 violation have been made upon the violator. Any  
13 administratively imposed civil fine shall not be  
14 collected until after an opportunity for a  
15 hearing under chapter 91. Any appeal shall be  
16 filed within thirty days from the date of the  
17 final written decision. These proceedings shall  
18 not be a prerequisite for any civil fine or  
19 injunctive relief ordered by the circuit court;

20 (B) Each county by ordinance may provide for the  
21 addition of any unpaid civil fines, ordered by



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



1 water for residential use and sewer charges, on  
2 payment of the unpaid civil fines. Upon  
3 recordation of a notice of unpaid civil fines in  
4 the bureau of conveyances, the amount of the  
5 civil fines, including any increase in the amount  
6 of the fine which the county may assess, shall  
7 constitute a lien upon all real property or  
8 rights to real property belonging to any person  
9 liable for the unpaid civil fines. The lien in  
10 favor of the county shall be subordinate to any  
11 lien in favor of any person recorded or  
12 registered prior to the recordation of the notice  
13 of unpaid civil fines and senior to any lien  
14 recorded or registered after the recordation of  
15 the notice. The lien shall continue until the  
16 unpaid civil fines are paid in full or until a  
17 certificate of release or partial release of the  
18 lien, prepared by the county at the owner's  
19 expense, is recorded. The notice of unpaid civil  
20 fines shall state the amount of the fine as of  
21 the date of the notice and maximum permissible



1           daily increase of the fine. The county shall not  
2           be required to include a social security number,  
3           state general excise taxpayer identification  
4           number, or federal employer identification number  
5           on the notice. Recordation of the notice in the  
6           bureau of conveyances shall be deemed, at such  
7           time, for all purposes and without any further  
8           action, to procure a lien on land registered in  
9           land court under chapter 501. After the unpaid  
10          civil fines are added to the taxes, fees, or  
11          charges as specified by county ordinance, the  
12          unpaid civil fines shall be deemed immediately  
13          due, owing, and delinquent and may be collected  
14          in any lawful manner. The procedure for  
15          collection of unpaid civil fines authorized in  
16          this paragraph shall be in addition to any other  
17          procedures for collection available to the State  
18          and county by law or rules of the courts;

19          (C) Each county may impose civil fines upon any  
20          person who places graffiti on any real or  
21          personal property owned, managed, or maintained





1 by the county. The fine may be up to \$1,000 or  
2 may be equal to the actual cost of having the  
3 damaged property repaired or replaced. The  
4 parent or guardian having custody of a minor who  
5 places graffiti on any real or personal property  
6 owned, managed, or maintained by the county shall  
7 be jointly and severally liable with the minor  
8 for any civil fines imposed hereunder. Any such  
9 fine may be administratively imposed after an  
10 opportunity for a hearing under chapter 91, but  
11 such a proceeding shall not be a prerequisite for  
12 any civil fine ordered by any court. As used in  
13 this subparagraph, "graffiti" means any  
14 unauthorized drawing, inscription, figure, or  
15 mark of any type intentionally created by paint,  
16 ink, chalk, dye, or similar substances;

17 (D) At the completion of an appeal in which the  
18 county's enforcement action is affirmed and upon  
19 correction of the violation if requested by the  
20 violator, the case shall be reviewed by the  
21 county agency that imposed the civil fines to



1 determine the appropriateness of the amount of  
2 the civil fines that accrued while the appeal  
3 proceedings were pending. In its review of the  
4 amount of the accrued fines, the county agency  
5 may consider:

- 6 (i) The nature and egregiousness of the  
7 violation;  
8 (ii) The duration of the violation;  
9 (iii) The number of recurring and other similar  
10 violations;  
11 (iv) Any effort taken by the violator to correct  
12 the violation;  
13 (v) The degree of involvement in causing or  
14 continuing the violation;  
15 (vi) Reasons for any delay in the completion of  
16 the appeal; and  
17 (vii) Other extenuating circumstances.

18 The civil fine that is imposed by administrative  
19 order after this review is completed and the  
20 violation is corrected shall be subject to



1           judicial review, notwithstanding any provisions  
2           for administrative review in county charters;  
3       (E) After completion of a review of the amount of  
4           accrued civil fine by the county agency that  
5           imposed the fine, the amount of the civil fine  
6           determined appropriate, including both the  
7           initial civil fine and any accrued daily civil  
8           fine, shall immediately become due and  
9           collectible following reasonable notice to the  
10          violation. If no review of the accrued civil fine  
11          is requested, the amount of the civil fine, not  
12          to exceed the total accrual of civil fine prior  
13          to correcting the violation, shall immediately  
14          become due and collectible following reasonable  
15          notice to the violator, at the completion of all  
16          appeal proceedings; and  
17       (F) If no county agency exists to conduct appeal  
18          proceedings for a particular civil fine action  
19          taken by the county, then one shall be  
20          established by ordinance before the county shall  
21          impose the civil fine;



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

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

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

15 SECTION 2. If any provision of this Act, or the  
16 application thereof to any person or circumstance, is held  
17 invalid, the invalidity does not affect other provisions or  
18 applications of the Act that can be given effect without the  
19 invalid provision or application, and to this end the provisions  
20 of this Act are severable.



1       SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.  
3       SECTION 4. This Act shall take effect on July 1, 3000.



**Report Title:**

Sale of Real Property; DOT; Counties

**Description:**

Authorizes the counties to sell or dispose of property bordering the ocean when the Department of Transportation requests the acquisition of the property for state highway purposes.  
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.*

