

JAN 18 2008

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# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1           SECTION 1. The legislature finds that the community rating  
2 system of the national flood insurance program, administered by  
3 the Federal Emergency Management Agency, is a voluntary  
4 incentive program. The goals of the community rating system are  
5 to reduce flood losses, facilitate accurate insurance rating,  
6 and promote awareness of flood insurance. Participation in the  
7 community rating system may result in discounts in flood  
8 insurance premiums of up to forty-five per cent; presently,  
9 however, only the county of Maui is participating in the system.

10           The purpose of this Act is to require each of the counties  
11 to participate in the community rating system.

12           SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended  
13 by adding a new section to be appropriately designated and to  
14 read as follows:

15           "§46-    Flood insurance program; county coordinator.    Each  
16 county shall adopt an ordinance designating a county official to  
17 serve as a full-time coordinator to work with the national flood



1 insurance program in the program's community rating system. The  
 2 designated county official shall submit any necessary  
 3 documentation to participate in the community rating system and  
 4 ensure that the county is in full compliance with the  
 5 regulations of the national flood insurance program."

6 SECTION 3. Chapter 126, Hawaii Revised Statutes, is  
 7 amended by adding a new section to be appropriately designated  
 8 and to read as follows:

9 "§126- County authorization. Each county shall adopt an  
 10 ordinance designating a county official to serve as a full-time  
 11 coordinator to work with the national flood insurance program in  
 12 the program's community rating system and to ensure that the  
 13 county is in full compliance with the regulations of the  
 14 national flood insurance program as provided in section  
 15 46- ."

16 SECTION 4. Section 46-1.5, Hawaii Revised Statutes, is  
 17 amended to read as follows:

18 "**§46-1.5 General powers and limitation of the counties.**  
 19 Subject to general law, each county shall have the following  
 20 powers and shall be subject to the following liabilities,  
 21 requirements, and limitations:



- 1           (1) Each county shall have the power to frame and adopt a  
2           charter for its own self-government that shall  
3           establish the county executive, administrative, and  
4           legislative structure and organization, including but  
5           not limited to the method of appointment or election  
6           of officials, their duties, responsibilities, and  
7           compensation, and the terms of their office;
- 8           (2) Each county shall have the power to provide for and  
9           regulate the marking and lighting of all buildings and  
10          other structures that may be obstructions or hazards  
11          to aerial navigation, so far as may be necessary or  
12          proper for the protection and safeguarding of life,  
13          health, and property;
- 14          (3) Each county shall have the power to enforce all claims  
15          on behalf of the county and approve all lawful claims  
16          against the county, but shall be prohibited from  
17          entering into, granting, or making in any manner any  
18          contract, authorization, allowance payment, or  
19          liability contrary to the provisions of any county  
20          charter or general law;
- 21          (4) Each county shall have the power to make contracts and  
22          to do all things necessary and proper to carry into



1 execution all powers vested in the county or any  
2 county officer;

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

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

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

14 (C) Construct, acquire by gift, purchase, or by the  
15 exercise of eminent domain, reconstruct, improve,  
16 better, extend, and maintain projects or  
17 undertakings for the control of and protection  
18 against floods and flood waters, including the  
19 power to drain and rehabilitate lands already  
20 flooded; and

21 (D) Enact zoning ordinances providing that lands  
22 deemed subject to seasonable, periodic, or



1 occasional flooding shall not be used for  
2 residence or other purposes in a manner as to  
3 endanger the health or safety of the occupants  
4 thereof, as required by the Federal Flood  
5 Insurance Act of 1956 (chapter 1025, Public Law  
6 1016);

7 provided that each county shall participate in the  
8 community rating system of the national flood  
9 insurance program as provided in section 46- ;

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

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

16 (8) Each county shall have the power to fix the fees and  
17 charges for all official services not otherwise  
18 provided for;

19 (9) Each county shall have the power to provide by  
20 ordinance assessments for the improvement or  
21 maintenance of districts within the county;



1           (10) Except as otherwise provided, no county shall have the  
2                   power to give or loan credit to, or in aid of, any  
3                   person or corporation, directly or indirectly, except  
4                   for a public purpose;

5           (11) Where not within the jurisdiction of the public  
6                   utilities commission, each county shall have the power  
7                   to regulate by ordinance the operation of motor  
8                   vehicle common carriers transporting passengers within  
9                   the county and adopt and amend rules the county deems  
10                  necessary for the public convenience and necessity;

11          (12) Each county shall have the power to enact and enforce  
12                  ordinances necessary to prevent or summarily remove  
13                  public nuisances and to compel the clearing or removal  
14                  of any public nuisance, refuse, and uncultivated  
15                  undergrowth from streets, sidewalks, public places,  
16                  and unoccupied lots. In connection with these powers,  
17                  each county may impose and enforce liens upon the  
18                  property for the cost to the county of removing and  
19                  completing the necessary work where the property  
20                  owners fail, after reasonable notice, to comply with  
21                  the ordinances. The authority provided by this  
22                  paragraph shall not be self-executing, but shall



1           become fully effective within a county only upon the  
2           enactment or adoption by the county of appropriate and  
3           particular laws, ordinances, or rules defining "public  
4           nuisances" with respect to each county's respective  
5           circumstances. The counties shall provide the  
6           property owner with the opportunity to contest the  
7           summary action and to recover the owner's property;

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

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

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

20               (i) Local police matters;

21               (ii) Matters of sanitation;

22               (iii) Matters of inspection of buildings;



- 1 (iv) Matters of condemnation of unsafe  
2 structures, plumbing, sewers, dairies, milk,  
3 fish, and morgues; and
- 4 (v) Matters of the collection and disposition of  
5 rubbish and garbage;
- 6 (B) Provide exemptions for homeless facilities and  
7 any other program for the homeless authorized by  
8 chapter 356D, for all matters under this  
9 paragraph;
- 10 (C) Appoint county physicians and sanitary and other  
11 inspectors as necessary to carry into effect  
12 ordinances made under this paragraph, who shall  
13 have the same power as given by law to agents of  
14 the department of health, subject only to  
15 limitations placed on them by the terms and  
16 conditions of their appointments; and
- 17 (D) Fix a penalty for the violation of any ordinance,  
18 which penalty may be a misdemeanor, petty  
19 misdemeanor, or violation as defined by general  
20 law;
- 21 (15) Each county shall have the power to provide public  
22 pounds; to regulate the impounding of stray animals





1 and fowl, and their disposition; and to provide for  
2 the appointment, powers, duties, and fees of animal  
3 control officers;

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

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

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

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

18 (17) Each county shall have the power to provide by charter  
19 for the prosecution of all offenses and to prosecute  
20 for offenses against the laws of the State under the  
21 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  
22                    plants, and apparatus and appliances for lighting



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



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

3           (23) Each county shall have the power to establish and  
4           maintain waterworks and sewer works; to collect rates  
5           for water supplied to consumers and for the use of  
6           sewers; to install water meters whenever deemed  
7           expedient; provided that owners of premises having  
8           vested water rights under existing laws appurtenant to  
9           the premises shall not be charged for the installation  
10          or use of the water meters on the premises; to take  
11          over from the State existing waterworks systems,  
12          including water rights, pipelines, and other  
13          appurtenances belonging thereto, and sewer systems,  
14          and to enlarge, develop, and improve the same;

15          (24) (A) Each county may impose civil fines, in addition  
16          to criminal penalties, for any violation of  
17          county ordinances or rules after reasonable  
18          notice and requests to correct or cease the  
19          violation have been made upon the violator. Any  
20          administratively imposed civil fine shall not be  
21          collected until after an opportunity for a  
22          hearing under chapter 91. Any appeal shall be



1 filed within thirty days from the date of the  
2 final written decision. These proceedings shall  
3 not be a prerequisite for any civil fine or  
4 injunctive relief ordered by the circuit court;

(B) Each county by ordinance may provide for the  
5 addition of any unpaid civil fines, ordered by  
6 any court of competent jurisdiction, to any  
7 taxes, fees, or charges, with the exception of  
8 fees or charges for water for residential use and  
9 sewer charges, collected by the county. Each  
10 county by ordinance may also provide for the  
11 addition of any unpaid administratively imposed  
12 civil fines, which remain due after all judicial  
13 review rights under section 91-14 are exhausted,  
14 to any taxes, fees, or charges, with the  
15 exception of water for residential use and sewer  
16 charges, collected by the county. The ordinance  
17 shall specify the administrative procedures for  
18 the addition of the unpaid civil fines to the  
19 eligible taxes, fees, or charges and may require  
20 hearings or other proceedings. After addition of  
21 the unpaid civil fines to the taxes, fees, or  
22



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



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



- 1 (C) Each county may impose civil fines upon any  
2 person who places graffiti on any real or  
3 personal property owned, managed, or maintained  
4 by the county. The fine may be up to \$1,000 or  
5 may be equal to the actual cost of having the  
6 damaged property repaired or replaced. The  
7 parent or guardian having custody of a minor who  
8 places graffiti on any real or personal property  
9 owned, managed, or maintained by the county shall  
10 be jointly and severally liable with the minor  
11 for any civil fines imposed hereunder. Any such  
12 fine may be administratively imposed after an  
13 opportunity for a hearing under chapter 91, but  
14 such a proceeding shall not be a prerequisite for  
15 any civil fine ordered by any court. As used in  
16 this subparagraph, "graffiti" means any  
17 unauthorized drawing, inscription, figure, or  
18 mark of any type intentionally created by paint,  
19 ink, chalk, dye, or similar substances;
- 20 (D) At the completion of an appeal in which the  
21 county's enforcement action is affirmed and upon  
22 correction of the violation if requested by the





1 violator, the case shall be reviewed by the  
2 county agency that imposed the civil fines to  
3 determine the appropriateness of the amount of  
4 the civil fines that accrued while the appeal  
5 proceedings were pending. In its review of the  
6 amount of the accrued fines, the county agency  
7 may consider:

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

20 The civil fine that is imposed by administrative  
21 order after this review is completed and the  
22 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;  
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 may exempt by executive order donors, provider  
3                   agencies, homeless facilities, and any other program  
4                   for the homeless under chapter 356D from real property  
5                   taxes, water and sewer development fees, rates  
6                   collected for water supplied to consumers and for use  
7                   of sewers, and any other county taxes, charges, or  
8                   fees; provided that any county may enact ordinances to  
9                   regulate and grant the exemptions granted by this  
10                  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 5. Section 46-11, Hawaii Revised Statutes, is  
16           amended to read as follows:

17           "**§46-11 Federal flood insurance.** (a) The Hawaii tourism  
18           authority in regard to the convention center district and the  
19           mayor or executive officer and the council of the various  
20           counties, in regard to the respective counties, may participate  
21           and apply on behalf of their respective district and counties  
22           for flood insurance coverage pursuant to any applicable



1 provisions of Public Law 1016, Eighty-fourth Congress, Second  
 2 Session, (70 Stat. 1078). The Hawaii tourism authority, in  
 3 regard to the convention center district, and the mayor or  
 4 executive officer and the council of the various counties, in  
 5 regard to the respective counties, shall be vested with the  
 6 functions, powers, and duties which are necessary to enable  
 7 their respective district and counties to qualify, participate,  
 8 and apply for the flood insurance coverage.

9 (b) Each county shall participate in the community rating  
 10 system of the national flood insurance program as provided in  
 11 section 46- ."

12 SECTION 6. There is appropriated out of the general  
 13 revenues of the State of Hawaii the sum of \$ or so much  
 14 thereof as may be necessary for fiscal year 2008-2009 to assist  
 15 the counties in the implementation of this Act; provided that  
 16 the funds shall be allocated as follows:

17	City and county of Honolulu	\$
18	County of Kauai	\$
19	County of Maui	\$
20	County of Hawaii	\$

21 The sum appropriated shall be expended by the city and  
 22 county of Honolulu, the county of Kauai, the county of Maui, and



1 the county of Hawaii, as appropriate, for the purposes of this  
2 Act.

3 SECTION 7. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect on July 1, 2008.

6

INTRODUCED BY: Norman Solomon  
Will Egan

Bruce S. Kohler  
Gordon J.



**Report Title:**

National Flood Insurance Program; Counties; Appropriation

**Description:**

Requires each county to adopt an ordinance to participate in the community rating system of the national flood insurance program. Appropriates funds to the counties to implement the Act.

