

JAN 17 2007

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-A Flood insurance program; county coordinator. Each
16 county shall adopt an ordinance designating a county official to
17 be 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 appropriated designated
8 and to read as follows:

9 "§126- County authorization. Each county shall adopt an
10 ordinance designating a county official to be 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 46-A."

15 SECTION 4. Section 46-1.5, HRS, is amended to read as
16 follows:

17 **"§46-1.5 General powers and limitation of the counties.**

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

21 (1) Each county shall have the power to frame and adopt a
22 charter for its own self-government, which shall



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

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

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

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



1 (5) Each county shall have the power to maintain channels,
2 whether natural or artificial, including their exits
3 to the ocean, in suitable condition to carry off storm
4 waters; and to remove from the channels, and from the
5 shores and beaches, any debris that is likely to
6 create an unsanitary condition or become a public
7 nuisance; provided that, to the extent any of the
8 foregoing work is a private responsibility, the
9 responsibility may be enforced by the county in lieu
10 of the work being done at public expense. Counties
11 also shall have the power to construct, acquire by
12 gift, purchase, or by the exercise of eminent domain,
13 reconstruct, improve, better, extend, and maintain
14 projects or undertakings for the control of and
15 protection against floods and flood waters, including
16 the power to drain and rehabilitate lands already
17 flooded, and to enact zoning ordinances providing that
18 lands deemed subject to seasonable, periodic, or
19 occasional flooding shall not be used for residence or
20 other purposes in a manner as to endanger the health
21 or safety of the occupants thereof, as required by the
22 Federal Flood Insurance Act of 1956 (chapter 1025,



1 Public Law 1016). Each county shall participate in
2 the community rating system of the National Flood
3 Insurance Program as provided in section 46-A;

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

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

10 (8) Each county shall have the power to fix the fees and
11 charges for all official services not otherwise
12 provided for;

13 (9) Each county shall have the power to provide by
14 ordinance assessments for the improvement or
15 maintenance of districts within the county;

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

20 (11) Where not within the jurisdiction of the public
21 utilities commission, each county shall have the power
22 to regulate by ordinance the operation of motor



1 vehicle common carriers transporting passengers within
2 the county and adopt and amend rules the county deems
3 necessary for the public convenience and necessity;

4 (12) Each county shall have the power to enact and enforce
5 ordinances necessary to prevent or summarily remove
6 public nuisances and to compel the clearing or removal
7 of any public nuisance, refuse, and uncultivated
8 undergrowth from streets, sidewalks, public places,
9 and unoccupied lots, and in these connections, to
10 impose and enforce liens upon the property for the
11 cost to the county of removing and completing the
12 necessary work where the owners fail, after reasonable
13 notice, to comply with the ordinances. The authority
14 provided by this paragraph shall not be self-
15 executing, but shall become fully effective within a
16 county only upon the enactment or adoption by the
17 county of appropriate and particular laws, ordinances,
18 or rules defining "public nuisances" with respect to
19 each county's respective circumstances. The counties
20 shall provide the property owner with the opportunity
21 to contest the summary action and to recover the
22 owner's property;



1 (13) Each county shall have the power to enact ordinances
2 deemed necessary to protect health, life, and
3 property, and to preserve the order and security of
4 the county and its inhabitants on any subject or
5 matter not inconsistent with, or tending to defeat,
6 the intent of any state statute, provided also that
7 the statute does not disclose an express or implied
8 intent that the statute shall be exclusive or uniform
9 throughout the State;

10 (14) Each county shall have the power to make and enforce
11 within the limits of the county all necessary
12 ordinances covering: all local police matters; all
13 matters of sanitation; all matters of inspection of
14 buildings; all matters of condemnation of unsafe
15 structures, plumbing, sewers, dairies, milk, fish, and
16 morgues; all matters of the collection and disposition
17 of rubbish and garbage; and to provide exemptions for
18 homeless facilities and any other program for the
19 homeless authorized by chapter 201G, for all matters
20 under this paragraph; and to appoint county physicians
21 and sanitary and other inspectors as necessary to
22 carry into effect ordinances made under this



1 paragraph, who shall have the same power as given by
2 law to agents of the department of health, subject
3 only to limitations placed on them by the terms and
4 conditions of their appointments; and to fix a penalty
5 for the violation of any ordinance, which penalty may
6 be a misdemeanor, petty misdemeanor, or violation as
7 defined by general law;

8 (15) Each county shall have the power to provide public
9 pounds, to regulate the impounding of stray animals
10 and fowl, and their disposition, and to provide for
11 the appointment, powers, duties, and fees of animal
12 control officers;

13 (16) Each county shall have the power to purchase and
14 otherwise acquire, lease, and hold real and personal
15 property within the defined boundaries of the county
16 and to dispose of the real and personal property as
17 the interests of the inhabitants of the county may
18 require, except that: any property held for school
19 purposes may not be disposed of without the consent of
20 the superintendent of education; no property bordering
21 the ocean shall be sold or otherwise disposed of; and
22 all proceeds from the sale of park lands shall be



1 expended only for the acquisition of property for park
2 or recreational purposes;

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

7 (18) Each county shall have the power to make
8 appropriations in amounts deemed appropriate from any
9 moneys in the treasury, for the purpose of community
10 promotion and public celebrations, the entertainment
11 of distinguished persons as may from time to time
12 visit the county, for the entertainment of other
13 distinguished persons as well as public officials when
14 deemed to be in the best interest of the community,
15 and the rendering of civic tribute to individuals who,
16 by virtue of their accomplishments and community
17 service, merit civic commendations, recognition, or
18 remembrance;

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

20 (A) Construct, purchase, take on lease, lease,
21 sublease, or in any other manner acquire, manage,
22 maintain, or dispose of buildings for county



1 purposes, sewers, sewer systems, pumping
2 stations, waterworks, including reservoirs,
3 wells, pipelines, and other conduits for
4 distributing water to the public, lighting
5 plants, and apparatus and appliances for lighting
6 streets and public buildings and manage,
7 regulate, and control the same;

8 (B) Regulate and control the location and quality of
9 all appliances necessary to the furnishing of
10 water, heat, light, power, telephonic, and
11 telegraphic service to the county;

12 (C) Acquire, regulate, and control any and all
13 appliances for the sprinkling and cleaning of the
14 streets and the public ways and for flushing the
15 sewers; and

16 (D) Open, close, construct, or maintain county
17 highways or charge toll on county highways;
18 provided that all revenues received from a toll
19 charge shall be used for the construction or
20 maintenance of county highways;



- 1 (20) Each county shall have the power to regulate the
2 renting, subletting, and rental conditions of property
3 for places of abode by ordinance;
- 4 (21) Unless otherwise provided by law, each county shall
5 have the power to establish by ordinance the order of
6 succession of county officials in the event of a
7 military or civil disaster;
- 8 (22) Each county shall have the power to sue and be sued in
9 its corporate name;
- 10 (23) Each county shall have the power to establish and
11 maintain waterworks and sewer works; to collect rates
12 for water supplied to consumers and for the use of
13 sewers; to install water meters whenever deemed
14 expedient; provided that owners of premises having
15 vested water rights under existing laws appurtenant to
16 the premises shall not be charged for the installation
17 or use of the water meters on the premises; to take
18 over from the State existing waterworks systems,
19 including water rights, pipelines, and other
20 appurtenances belonging thereto, and sewer systems,
21 and to enlarge, develop, and improve the same;



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

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



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



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



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

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



1 any civil fine ordered by any court. As used in
2 this subparagraph, "graffiti" means any
3 unauthorized drawing, inscription, figure, or
4 mark of any type intentionally created by paint,
5 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 will be reviewed by the county
10 agency that imposed the civil fines to determine
11 the appropriateness of the amount of the civil
12 fines that accrued while the appeal proceedings
13 were pending. In its review of the amount of the
14 accrued fines, the county agency may consider the
15 following: nature and egregiousness of the
16 violation, duration of the violation, number of
17 recurring and other similar violations, effort
18 taken by the violator to correct the violation,
19 degree of involvement in causing or continuing
20 the violation, reasons for any delay in the
21 completion of the appeal, and other extenuating
22 circumstances. The civil fine which is imposed



1 by administrative order after this review is
2 completed and the violation is corrected is
3 subject to only judicial review, notwithstanding
4 any provisions for administrative review in
5 county charters;

6 (E) After completion of a review of the amount of
7 accrued civil fine by the county agency which
8 imposed the fine, the amount of the civil fine
9 determined appropriate, including both the
10 initial civil fine and any accrued daily civil
11 fine, shall immediately become due and
12 collectible following reasonable notice to the
13 violator. If no review of the accrued civil fine
14 is requested, the amount of the civil fine, not
15 to exceed the total accrual of civil fine prior
16 to correcting the violation, shall immediately
17 become due and collectible following reasonable
18 notice to the violator, at the completion of all
19 appeal proceedings;

20 (F) If no county agency exists to conduct appeal
21 proceedings for a particular civil fine action
22 taken by the county, then one shall be



1 established by ordinance before the county shall
2 impose that civil fine;

3 (25) Any law to the contrary notwithstanding, any county
4 mayor may exempt by executive order donors, provider
5 agencies, homeless facilities, and any other program
6 for the homeless under chapter 201G from real property
7 taxes, water and sewer development fees, rates
8 collected for water supplied to consumers and for use
9 of sewers, and any other county taxes, charges, or
10 fees; provided that any county may enact ordinances to
11 regulate and grant the exemptions granted by this
12 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 5. Section 46-11, HRS, is amended to read as
18 follows:

19 "**§46-11 Federal flood insurance.** (a) The Hawaii tourism
20 authority in regard to the convention center district and the
21 mayor or executive officer and the council of the various
22 counties, in regard to the respective counties, may participate



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

11 (b) Each county shall participate in the community rating
 12 system of the National Flood Insurance Program as provided in
 13 section 46-A."

14 SECTION 6. There is appropriated out of the general
 15 revenues of the State of Hawaii the following sums, or so much
 16 thereof as may be necessary for fiscal year 2007-2008, to assist
 17 the counties in implementing this Act:

18	City and county of Honolulu	\$
19	County of Kauai	\$
20	County of Maui	\$
21	County of Hawaii	\$
22	Total	\$



1 SECTION 7. The sum appropriated shall be expended by the
2 respective counties for the purposes of this Act.

3 SECTION 8. The sums appropriated shall constitute the
4 State's share of the cost of mandated programs under Article
5 VIII, section 5, of the State Constitution.

6 SECTION 9. In codifying the new section added by section 2
7 of this Act, the revisor of statutes shall substitute
8 appropriate section number for the letter used in designating
9 the new section in this Act.

10 SECTION 10. New statutory material is underscored.

11 SECTION 11. This Act shall take effect on July 1, 2007.

12

INTRODUCED BY:

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Report Title:

Insurance; National Flood Insurance Program

Description:

Requires each county to adopt an ordinance to participate in the community rating system of the National Flood Insurance Program. Appropriate funds to the counties to implement the Act.

