

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO ETHICS.

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

1           SECTION 1. The legislature finds that Section  
2 46-1.5(24)(A), Hawaii Revised Statutes, allows counties to  
3 impose civil fines for violations of county ordinances after  
4 making reasonable requests to the violator to correct or cease  
5 the violation. While this procedure is appropriate for most  
6 administrative matters, ethics violations may be either a one  
7 time event or severe in nature whereby giving notice or warning  
8 of the improper behavior in accordance with the statute would be  
9 ineffective. This Act amends the statute to allow a county  
10 ethics commission to issue civil fines when an ethics violation  
11 is serious, obvious, and warrants a civil fine without a prior  
12 warning.

13           The legislature understands that the county ethics  
14 commissions may presently issue fines for ethics violations  
15 after notice and a hearing, but there is no county appeals board  
16 established to consider an appeal of these fines. Accordingly,  
17 the counties and their residents would benefit from the appeals



1 process applicable to the state ethics commission, which  
2 likewise issues civil fines after notice and a hearing, but  
3 allows appeals by judicial reviews in accordance with chapter  
4 91, Hawaii Revised Statutes.

5 SECTION 2. The purpose of this Act is to establish an  
6 appeal process for civil fines issued by county ethics  
7 commissions in the mirror image of the state ethics commission  
8 appeal procedure.

9 This Act provides consistency between the appeal process  
10 for county and state ethics violations by permitting county  
11 ethics fines to be appealed by a court action in accordance with  
12 procedures established pursuant to chapter 91, Hawaii Revised  
13 Statutes.

14 SECTION 3. Section 46-1.5, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§46-1.5 General powers and limitation of the counties.**

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

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

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



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



1                   thereof, as required by the Federal Flood  
2                   Insurance Act of 1956 (chapter 1025, Public Law  
3                   1016);

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. In connection with these powers,  
10 each county may impose and enforce liens upon the  
11 property for the cost to the county of removing and  
12 completing the necessary work where the property  
13 owners fail, after reasonable notice, to comply with  
14 the ordinances. The authority provided by this  
15 paragraph shall not be self-executing, but shall  
16 become fully effective within a county only upon the  
17 enactment or adoption by the county of appropriate and  
18 particular laws, ordinances, or rules defining "public  
19 nuisances" with respect to each county's respective  
20 circumstances. The counties shall provide the  
21 property owner with the opportunity to contest the  
22 summary action and to recover the 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 where the statute does  
7                   not disclose an express or implied intent that the  
8                   statute shall be exclusive or uniform throughout the  
9                   State;

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

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

13                   (i) Local police matters;

14                   (ii) Matters of sanitation;

15                   (iii) Matters of inspection of buildings;

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

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

21           (B) Provide exemptions for homeless facilities and  
22                   any other program for the homeless authorized by



1 chapter 356D, for all matters under this  
2 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  
22 and to dispose of the real and personal property as



1 the interests of the inhabitants of the county may  
2 require, except that:

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

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

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

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

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

18 (A) Community promotion and public celebrations;

19 (B) The entertainment of distinguished persons as may  
20 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  
21 water, heat, light, power, telephone, and  
22 telecommunications service to the county;



1 (C) Acquire, regulate, and control any and all  
2 appliances for the sprinkling and cleaning of the  
3 streets and the public ways, and for flushing the  
4 sewers; and

5 (D) Open, close, construct, or maintain county  
6 highways or charge toll on county highways;  
7 provided that all revenues received from a toll  
8 charge shall be used for the construction or  
9 maintenance of county highways;

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

13 (21) Unless otherwise provided by law, each county shall  
14 have the power to establish by ordinance the order of  
15 succession of county officials in the event of a  
16 military or civil disaster;

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

19 (23) Each county shall have the power to establish and  
20 maintain waterworks and sewer works; to collect rates  
21 for water supplied to consumers and for the use of  
22 sewers; to install water meters whenever deemed



1 expedient; provided that owners of premises having  
2 vested water rights under existing laws appurtenant to  
3 the premises shall not be charged for the installation  
4 or use of the water meters on the premises; to take  
5 over from the State existing waterworks systems,  
6 including water rights, pipelines, and other  
7 appurtenances belonging thereto, and sewer systems,  
8 and to enlarge, develop, and improve the same;

9 (24) (A) Each county may impose civil fines, in addition  
10 to criminal penalties, for any violation of  
11 county ordinances or rules after reasonable  
12 notice and requests to correct or cease the  
13 violation have been made upon the violator[-];  
14 provided that a county ethics commission may  
15 impose a civil fine for violations of county  
16 ethics laws, pursuant to county ordinance,  
17 without making a request to the violator to  
18 correct or cease the violation. Any  
19 administratively imposed civil fine shall not be  
20 collected until after an opportunity for a  
21 hearing under chapter 91. Any appeal shall be  
22 filed within thirty days from the date of the



1 final written decision. These proceedings shall  
2 not be a prerequisite for any civil fine or  
3 injunctive relief ordered by the circuit court;  
4 (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 charges, the unpaid civil fines shall not become



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



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



1                   appropriate court of law, pursuant to procedures  
2                   established in accordance with chapter 91;

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 356D 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 4. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19          SECTION 5. This Act shall take effect upon its approval.

20

INTRODUCED BY: \_\_\_\_\_





**Report Title:**

County Ethics Committees; Civil Fines; Appeal Proceedings

**Description:**

Conforms county ethics procedures for civil fines with state ethics commission procedures by allowing appeals of civil fines directly to a court under the Administrative Procedures Act; authorizes counties to allow a county ethics commission to issue civil fines without a prior warning.

