

JAN 23 2009

A BILL FOR AN ACT

RELATING TO GRAFFITI.

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

1 SECTION 1. The legislature finds that graffiti is a
2 prevalent problem in Hawaii and a blight on the environment.
3 Graffiti lowers property values and is evidence of a deliberate
4 act of disrespect for society by the perpetrator. Property
5 owners must expend time and resources to cover up the graffiti
6 defacing their property.

7 The purpose of this Act is to provide for a comprehensive
8 statewide scheme of civil fines for graffiti.

9 SECTION 2. The Hawaii Revised Statutes is amended by
10 adding a new section to be appropriately designated and to read
11 as follows:

12 "§ - Graffiti; civil fines. (a) There shall be a
13 civil fine imposed upon any person who places any graffiti on
14 any real or personal property, whether owned by the State,
15 county, or a government agency, or privately. The civil fine
16 may be imposed by an appropriate court pursuant to a civil
17 action brought by the attorney general, without regard to any



1 criminal proceeding for property damage for the graffiti. The
2 fine shall be in the amount of \$100 for each square foot of
3 property damaged by graffiti, as measured by a rectangle drawn
4 around the graffiti without extra allowance for un-defaced
5 surface surrounding the graffiti; provided that fractions of a
6 foot in length shall be rounded up the nearest foot.

7 (b) The attorney general shall be entitled to ten per cent
8 of the total civil fine imposed under subsection (a) for the
9 costs of administering this section.

10 (c) Any person may submit to the department of the
11 attorney general photographic or video evidence of a person in
12 the process of committing an act of graffiti; provided that the
13 identity of the person submitting the photographic or video
14 evidence shall remain confidential; provided further that the
15 person submitting photographic or video evidence shall be
16 entitled to receive one-third of any civil fine assessed against
17 the person committing graffiti and, if there is more than one
18 person submitting photographic or video evidence of the same act
19 of graffiti, each person shall be entitled to an equally
20 proportionate share of the fine; and provided further that the
21 one-third amount shall be taken after the ten per cent deduction
22 under subsection (b).



1 (d) After deductions under subsections (b) and (c), the
2 remaining amount shall be paid to the owner of the property
3 damaged by graffiti to compensate for remediation of the damage.

4 (e) If the person assessed a fine under this section for
5 an act of graffiti does not pay the fine in full or in part
6 within thirty days, a lien shall arise on that person's real and
7 personal property, including state income tax refunds and any
8 monetary state benefits received by that person. The attorney
9 general may also bring garnishment proceedings under chapter 652
10 to collect the fine. The attorney general may make allowance
11 for payment of the fine in accordance with a payment schedule.

12 (f) If the person assessed a fine under this section is a
13 minor, collection of the fine may proceed against the parents or
14 legal guardian of the minor; provided that subsection (e) shall
15 apply as against the parents or legal guardian. If the court
16 determines that the parents or legal guardians took all
17 reasonably expected actions to deter or dissuade the minor from
18 committing graffiti prior to the act of graffiti before the
19 court, the parents or legal guardians shall not be proceeded
20 against, in which case the minor shall remain liable for the
21 fine, including garnishment of future earnings of the minor and
22 liens on state income tax returns of the minor and any state



1 monetary benefits received by the minor as a minor or as an
2 adult.

3 (g) This section shall be in addition to any criminal
4 proceedings for property damage.

5 (h) As used in this section, "graffiti" means any
6 unauthorized drawing, inscription, figure, or mark of any type
7 intentionally created by paint, ink, chalk, dye, or similar
8 substances."

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

11 **"§46-1.5 General powers and limitation of the counties.**

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

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



- 1 (2) Each county shall have the power to provide for and
2 regulate the marking and lighting of all buildings and
3 other structures that may be obstructions or hazards
4 to aerial navigation, so far as may be necessary or
5 proper for the protection and safeguarding of life,
6 health, and property;
- 7 (3) Each county shall have the power to enforce all claims
8 on behalf of the county and approve all lawful claims
9 against the county, but shall be prohibited from
10 entering into, granting, or making in any manner any
11 contract, authorization, allowance payment, or
12 liability contrary to the provisions of any county
13 charter or general law;
- 14 (4) Each county shall have the power to make contracts and
15 to do all things necessary and proper to carry into
16 execution all powers vested in the county or any
17 county officer;
- 18 (5) Each county shall have the power to:
 - 19 (A) Maintain channels, whether natural or artificial,
20 including their exits to the ocean, in suitable
21 condition to carry off storm waters;



- 1 (B) Remove from the channels, and from the shores and
2 beaches, any debris that is likely to create an
3 unsanitary condition or become a public nuisance;
4 provided that, to the extent any of the foregoing
5 work is a private responsibility, the
6 responsibility may be enforced by the county in
7 lieu of the work being done at public expense;
- 8 (C) Construct, acquire by gift, purchase, or by the
9 exercise of eminent domain, reconstruct, improve,
10 better, extend, and maintain projects or
11 undertakings for the control of and protection
12 against floods and flood waters, including the
13 power to drain and rehabilitate lands already
14 flooded; and
- 15 (D) Enact zoning ordinances providing that lands
16 deemed subject to seasonable, periodic, or
17 occasional flooding shall not be used for
18 residence or other purposes in a manner as to
19 endanger the health or safety of the occupants
20 thereof, as required by the Federal Flood
21 Insurance Act of 1956 (chapter 1025, Public Law
22 1016);



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- 1 (6) Each county shall have the power to exercise the power
2 of condemnation by eminent domain when it is in the
3 public interest to do so;
- 4 (7) Each county shall have the power to exercise
5 regulatory powers over business activity as are
6 assigned to them by chapter 445 or other general law;
- 7 (8) Each county shall have the power to fix the fees and
8 charges for all official services not otherwise
9 provided for;
- 10 (9) Each county shall have the power to provide by
11 ordinance assessments for the improvement or
12 maintenance of districts within the county;
- 13 (10) Except as otherwise provided, no county shall have the
14 power to give or loan credit to, or in aid of, any
15 person or corporation, directly or indirectly, except
16 for a public purpose;
- 17 (11) Where not within the jurisdiction of the public
18 utilities commission, each county shall have the power
19 to regulate by ordinance the operation of motor
20 vehicle common carriers transporting passengers within
21 the county and adopt and amend rules the county deems
22 necessary for the public convenience and necessity;



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

20 (13) Each county shall have the power to enact ordinances
21 deemed necessary to protect health, life, and
22 property, and to preserve the order and security of



1 the county and its inhabitants on any subject or
2 matter not inconsistent with, or tending to defeat,
3 the intent of any state statute where the statute does
4 not disclose an express or implied intent that the
5 statute shall be exclusive or uniform throughout the
6 State;

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

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

10 (i) Local police matters;

11 (ii) Matters of sanitation;

12 (iii) Matters of inspection of buildings;

13 (iv) Matters of condemnation of unsafe

14 structures, plumbing, sewers, dairies, milk,
15 fish, and morgues; and

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

18 (B) Provide exemptions for homeless facilities and
19 any other program for the homeless authorized by
20 chapter 356D, for all matters under this
21 paragraph;



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

8 (D) Fix a penalty for the violation of any ordinance,
9 which penalty may be a misdemeanor, petty
10 misdemeanor, or violation as defined by general
11 law;

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

17 (16) Each county shall have the power to purchase and
18 otherwise acquire, lease, and hold real and personal
19 property within the defined boundaries of the county
20 and to dispose of the real and personal property as
21 the interests of the inhabitants of the county may
22 require, except that:



- 1 (A) Any property held for school purposes may not be
2 disposed of without the consent of the
3 superintendent of education;
- 4 (B) No property bordering the ocean shall be sold or
5 otherwise disposed of; and
- 6 (C) All proceeds from the sale of park lands shall be
7 expended only for the acquisition of property for
8 park or recreational purposes;
- 9 (17) Each county shall have the power to provide by charter
10 for the prosecution of all offenses and to prosecute
11 for offenses against the laws of the State under the
12 authority of the attorney general of the State;
- 13 (18) Each county shall have the power to make
14 appropriations in amounts deemed appropriate from any
15 moneys in the treasury, for the purpose of:
- 16 (A) Community promotion and public celebrations;
- 17 (B) The entertainment of distinguished persons as may
18 from time to time visit the county;
- 19 (C) The entertainment of other distinguished persons,
20 as well as, public officials when deemed to be in
21 the best interest of the community; and



- 1 (D) The rendering of civic tribute to individuals
- 2 who, by virtue of their accomplishments and
- 3 community service, merit civic commendations,
- 4 recognition, or remembrance;
- 5 (19) Each county shall have the power to:
- 6 (A) Construct, purchase, take on lease, lease,
- 7 sublease, or in any other manner acquire, manage,
- 8 maintain, or dispose of buildings for county
- 9 purposes, sewers, sewer systems, pumping
- 10 stations, waterworks, including reservoirs,
- 11 wells, pipelines, and other conduits for
- 12 distributing water to the public, lighting
- 13 plants, and apparatus and appliances for lighting
- 14 streets and public buildings, and manage,
- 15 regulate, and control the same;
- 16 (B) Regulate and control the location and quality of
- 17 all appliances necessary to the furnishing of
- 18 water, heat, light, power, telephone, and
- 19 telecommunications service to the county;
- 20 (C) Acquire, regulate, and control any and all
- 21 appliances for the sprinkling and cleaning of the



1 streets and the public ways, and for flushing the
2 sewers; and

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

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

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

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

17 (23) Each county shall have the power to establish and
18 maintain waterworks and sewer works; to collect rates
19 for water supplied to consumers and for the use of
20 sewers; to install water meters whenever deemed
21 expedient; provided that owners of premises having
22 vested water rights under existing laws appurtenant to



1 the premises shall not be charged for the installation
2 or use of the water meters on the premises; to take
3 over from the State existing waterworks systems,
4 including water rights, pipelines, and other
5 appurtenances belonging thereto, and sewer systems,
6 and to enlarge, develop, and improve the same;

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

19 (B) Each county by ordinance may provide for the
20 addition of any unpaid civil fines, ordered by
21 any court of competent jurisdiction, to any
22 taxes, fees, or charges, with the exception of



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



1 the bureau of conveyances, the amount of the
2 civil fines, including any increase in the amount
3 of the fine which the county may assess, shall
4 constitute a lien upon all real property or
5 rights to real property belonging to any person
6 liable for the unpaid civil fines. The lien in
7 favor of the county shall be subordinate to any
8 lien in favor of any person recorded or
9 registered prior to the recordation of the notice
10 of unpaid civil fines and senior to any lien
11 recorded or registered after the recordation of
12 the notice. The lien shall continue until the
13 unpaid civil fines are paid in full or until a
14 certificate of release or partial release of the
15 lien, prepared by the county at the owner's
16 expense, is recorded. The notice of unpaid civil
17 fines shall state the amount of the fine as of
18 the date of the notice and maximum permissible
19 daily increase of the fine. The county shall not
20 be required to include a social security number,
21 state general excise taxpayer identification
22 number, or federal employer identification number



1 on the notice. Recordation of the notice in the
2 bureau of conveyances shall be deemed, at such
3 time, for all purposes and without any further
4 action, to procure a lien on land registered in
5 land court under chapter 501. After the unpaid
6 civil fines are added to the taxes, fees, or
7 charges as specified by county ordinance, the
8 unpaid civil fines shall be deemed immediately
9 due, owing, and delinquent and may be collected
10 in any lawful manner. The procedure for
11 collection of unpaid civil fines authorized in
12 this paragraph shall be in addition to any other
13 procedures for collection available to the State
14 and county by law or rules of the courts;

15 ~~[(C) Each county may impose civil fines upon any~~
16 ~~person who places graffiti on any real or~~
17 ~~personal property owned, managed, or maintained~~
18 ~~by the county. The fine may be up to \$1,000 or~~
19 ~~may be equal to the actual cost of having the~~
20 ~~damaged property repaired or replaced. The~~
21 ~~parent or guardian having custody of a minor who~~
22 ~~places graffiti on any real or personal property~~



1 ~~owned, managed, or maintained by the county shall~~
2 ~~be jointly and severally liable with the minor~~
3 ~~for any civil fines imposed hereunder. Any such~~
4 ~~fine may be administratively imposed after an~~
5 ~~opportunity for a hearing under chapter 91, but~~
6 ~~such a proceeding shall not be a prerequisite for~~
7 ~~any civil fine ordered by any court. As used in~~
8 ~~this subparagraph, "graffiti" means any~~
9 ~~unauthorized drawing, inscription, figure, or~~
10 ~~mark of any type intentionally created by paint,~~
11 ~~ink, chalk, dye, or similar substances;~~

12 ~~(D)]~~ (C) At the completion of an appeal in which the
13 county's enforcement action is affirmed and upon
14 correction of the violation if requested by the
15 violation, the case shall be reviewed by the
16 county agency that imposed the civil fines to
17 determine the appropriateness of the amount of
18 the civil fines that accrued while the appeal
19 proceedings were pending. In its review of the
20 amount of the accrued fines, the county agency
21 may consider:



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

13 The civil fine that is imposed by administrative
14 order after this review is completed and the
15 violation is corrected shall be subject to
16 judicial review, notwithstanding any provisions
17 for administrative review in county charters;

18 ~~(E)~~ (D) After completion of a review of the amount of
19 accrued civil fine by the county agency that
20 imposed the fine, the amount of the civil fine
21 determined appropriate, including both the
22 initial civil fine and any accrued daily civil



1 fine, shall immediately become due and
2 collectible following reasonable notice to the
3 violator. If no review of the accrued civil fine
4 is requested, the amount of the civil fine, not
5 to exceed the total accrual of civil fine prior
6 to correcting the violation, shall immediately
7 become due and collectible following reasonable
8 notice to the violator, at the completion of all
9 appeal proceedings;

10 [~~(F)~~] (E) If no county agency exists to conduct appeal
11 proceedings for a particular civil fine action
12 taken by the county, then one shall be
13 established by ordinance before the county shall
14 impose the civil fine;

15 (25) Any law to the contrary notwithstanding, any county
16 mayor may exempt by executive order donors, provider
17 agencies, homeless facilities, and any other program
18 for the homeless under chapter 356D from real property
19 taxes, water and sewer development fees, rates
20 collected for water supplied to consumers and for use
21 of sewers, and any other county taxes, charges, or
22 fees; provided that any county may enact ordinances to



1 regulate and grant the exemptions granted by this
2 paragraph;

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

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

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

9 SECTION 5. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun, before its effective date.

12 SECTION 6. This Act shall take effect upon its approval.

13

INTRODUCED BY: Will Syms

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Report Title:

Graffiti; Civil Fines

Description:

Enacts comprehensive statewide mechanism for the imposition of civil fines for graffiti.

