

JAN 21 2010

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# A BILL FOR AN ACT

RELATING TO COUNTIES.

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

1           SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§46-1.5 General powers and limitation of the counties.

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

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

14           (2) Each county shall have the power to provide for and  
15 regulate the marking and lighting of all buildings and  
16 other structures that may be obstructions or hazards  
17 to aerial navigation, so far as may be necessary or



1 proper for the protection and safeguarding of life,  
2 health, and property;

3 (3) Each county shall have the power to enforce all claims  
4 on behalf of the county and approve all lawful claims  
5 against the county, but shall be prohibited from  
6 entering into, granting, or making in any manner any  
7 contract, authorization, allowance payment, or  
8 liability contrary to the provisions of any county  
9 charter or general law;

10 (4) Each county shall have the power to make contracts and  
11 to do all things necessary and proper to carry into  
12 execution all powers vested in the county or any  
13 county officer;

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

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

18 (B) Remove from the channels, and from the shores and  
19 beaches, any debris that is likely to create an  
20 unsanitary condition or become a public nuisance;  
21 provided that, to the extent any of the foregoing  
22 work is a private responsibility, the



1                    responsibility may be enforced by the county in  
2                    lieu of the work being done at public expense;

3                    (C) Construct, acquire by gift, purchase, or by the  
4                    exercise of eminent domain, reconstruct, improve,  
5                    better, extend, and maintain projects or  
6                    undertakings for the control of and protection  
7                    against floods and flood waters, including the  
8                    power to drain and rehabilitate lands already  
9                    flooded; and

10                    (D) Enact zoning ordinances providing that lands  
11                    deemed subject to seasonable, periodic, or  
12                    occasional flooding shall not be used for  
13                    residence or other purposes in a manner as to  
14                    endanger the health or safety of the occupants  
15                    thereof, as required by the Federal Flood  
16                    Insurance Act of 1956 (chapter 1025, Public Law  
17                    1016);

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



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



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

17 (13) Each county shall have the power to enact ordinances  
18 deemed necessary to protect health, life, and  
19 property, and to preserve the order and security of  
20 the county and its inhabitants on any subject or  
21 matter not inconsistent with, or tending to defeat,  
22 the intent of any state statute where the statute does



1 not disclose an express or implied intent that the  
2 statute shall be exclusive or uniform throughout the  
3 State;

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

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

7 (i) Local police matters;

8 (ii) Matters of sanitation;

9 (iii) Matters of inspection of buildings;

10 (iv) Matters of condemnation of unsafe

11 structures, plumbing, sewers, dairies, milk,  
12 fish, and morgues; and

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

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

19 (C) Appoint county physicians and sanitary and other  
20 inspectors as necessary to carry into effect  
21 ordinances made under this paragraph, who shall  
22 have the same power as given by law to agents of



1 the department of health, subject only to  
2 limitations placed on them by the terms and  
3 conditions of their appointments; and  
4 (D) Fix a penalty for the violation of any ordinance,  
5 which penalty may be a misdemeanor, petty  
6 misdemeanor, or violation as defined by general  
7 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:

19 (A) Any property held for school purposes may not be  
20 disposed of without the consent of the  
21 superintendent of education;



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

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

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

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

13 (A) Community promotion and public celebrations;

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

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

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





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



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

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

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

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

12 (23) Each county shall have the power to establish and  
13 maintain waterworks and sewer works; to collect rates  
14 for water supplied to consumers and for the use of  
15 sewers; to install water meters whenever deemed  
16 expedient; provided that owners of premises having  
17 vested water rights under existing laws appurtenant to  
18 the premises shall not be charged for the installation  
19 or use of the water meters on the premises; to take  
20 over from the State existing waterworks systems,  
21 including water rights, pipelines, and other



1 appurtenances belonging thereto, and sewer systems,  
2 and to enlarge, develop, and improve the same;

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

15 (B) Each county by ordinance may provide for the  
16 addition of any unpaid civil fines, ordered by  
17 any court of competent jurisdiction, to any  
18 taxes, fees, or charges, with the exception of  
19 fees or charges for water for residential use and  
20 sewer charges, collected by the county. Each  
21 county by ordinance may also provide for the  
22 addition of any unpaid administratively imposed



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



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



1 land court under chapter 501. After the unpaid  
2 civil fines are added to the taxes, fees, or  
3 charges as specified by county ordinance, the  
4 unpaid civil fines shall be deemed immediately  
5 due, owing, and delinquent and may be collected  
6 in any lawful manner. The procedure for  
7 collection of unpaid civil fines authorized in  
8 this paragraph shall be in addition to any other  
9 procedures for collection available to the State  
10 and county by law or rules of the courts;

11 (C) Each county may impose civil fines upon any  
12 person who places graffiti on any real or  
13 personal property owned, managed, or maintained  
14 by the county. The fine may be up to \$1,000 or  
15 may be equal to the actual cost of having the  
16 damaged property repaired or replaced. The  
17 parent or guardian having custody of a minor who  
18 places graffiti on any real or personal property  
19 owned, managed, or maintained by the county shall  
20 be jointly and severally liable with the minor  
21 for any civil fines imposed hereunder. Any such  
22 fine may be administratively imposed after an



1 opportunity for a hearing under chapter 91, but  
2 such a proceeding shall not be a prerequisite for  
3 any civil fine ordered by any court. As used in  
4 this subparagraph, "graffiti" means any  
5 unauthorized drawing, inscription, figure, or  
6 mark of any type intentionally created by paint,  
7 ink, chalk, dye, or similar substances;

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

- 18 (i) The nature and egregiousness of the  
19 violation;
- 20 (ii) The duration of the violation;
- 21 (iii) The number of recurring and other similar  
22 violations;



- 1 (iv) Any effort taken by the violator to correct
- 2 the violation;
- 3 (v) The degree of involvement in causing or
- 4 continuing the violation;
- 5 (vi) Reasons for any delay in the completion of
- 6 the appeal; and
- 7 (vii) Other extenuating circumstances.

8 The civil fine that is imposed by administrative  
9 order after this review is completed and the  
10 violation is corrected shall be subject to  
11 judicial review, notwithstanding any provisions  
12 for administrative review in county charters;

- 13 (E) After completion of a review of the amount of
- 14 accrued civil fine by the county agency that
- 15 imposed the fine, the amount of the civil fine
- 16 determined appropriate, including both the
- 17 initial civil fine and any accrued daily civil
- 18 fine, shall immediately become due and
- 19 collectible following reasonable notice to the
- 20 violator. If no review of the accrued civil fine
- 21 is requested, the amount of the civil fine, not
- 22 to exceed the total accrual of civil fine prior





1 to correcting the violation, shall immediately  
2 become due and collectible following reasonable  
3 notice to the violator, at the completion of all  
4 appeal proceedings;

5 (F) If no county agency exists to conduct appeal  
6 proceedings for a particular civil fine action  
7 taken by the county, then one shall be  
8 established by ordinance before the county shall  
9 impose the civil fine;

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

20 (26) Any county may establish a captive insurance company  
21 pursuant to article 19, chapter 431; [~~and~~]



1 (27) Each county shall have the power to enact and enforce  
2 ordinances regulating towing operations[~~-~~]; and

3 (28) Each county shall have the power to establish  
4 dispensaries for the distribution of marijuana for  
5 medical use, in accordance with part IX of chapter  
6 329; provided that such dispensaries shall only  
7 provide service to qualifying patients and primary  
8 caregivers registered under section 329-123."

9 SECTION 2. Section 237-24.3, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§237-24.3 Additional amounts not taxable. In addition to  
12 the amounts not taxable under section 237-24, this chapter shall  
13 not apply to:

14 (1) Amounts received from the loading, transportation, and  
15 unloading of agricultural commodities shipped for a  
16 producer or produce dealer on one island of this State  
17 to a person, firm, or organization on another island  
18 of this State. The terms "agricultural commodity",  
19 "producer", and "produce dealer" shall be defined in  
20 the same manner as they are defined in section 147-1;  
21 provided that agricultural commodities need not have  
22 been produced in the State;



- 1           (2) Amounts received from sales of:
  - 2            (A) Intoxicating liquor as the term "liquor" is
  - 3                defined in chapter 244D;
  - 4            (B) Cigarettes and tobacco products as defined in
  - 5                chapter 245; and
  - 6            (C) Agricultural, meat, or fish products;
  - 7                to any person or common carrier in interstate or
  - 8                foreign commerce, or both, whether ocean-going or air,
  - 9                for consumption out-of-state on the shipper's vessels
  - 10              or airplanes;
- 11          (3) Amounts received by the manager, submanager, or board
- 12            of directors of:
  - 13            (A) An association of owners of a condominium
  - 14                property regime established in accordance with
  - 15                chapter 514A or 514B; or
  - 16            (B) A nonprofit homeowners or community association
  - 17                incorporated in accordance with chapter 414D or
  - 18                any predecessor thereto and existing pursuant to
  - 19                covenants running with the land,
  - 20                in reimbursement of sums paid for common expenses;
- 21          (4) Amounts received or accrued from:





1 real property in this State; and provided further that  
2 gross rental income or gross rental proceeds from  
3 investments in real property received by an employee  
4 benefit plan after June 30, 1994, under written  
5 contracts executed prior to July 1, 1994, shall not be  
6 taxed until the contracts are renegotiated, renewed,  
7 or extended, or until after December 31, 1998,  
8 whichever is earlier. For the purposes of this  
9 paragraph, "employee benefit plan" means any plan as  
10 defined in section 1002(3) of title 29 of the United  
11 States Code, as amended;

12 (6) Amounts received for purchases made with United States  
13 Department of Agriculture food coupons under the  
14 federal food stamp program, and amounts received for  
15 purchases made with United States Department of  
16 Agriculture food vouchers under the Special  
17 Supplemental Foods Program for Women, Infants and  
18 Children;

19 (7) Amounts received by a hospital, infirmary, medical  
20 clinic, health care facility, pharmacy, or a  
21 practitioner licensed to administer the drug to an  
22 individual for selling prescription drugs or



1 prosthetic devices to an individual; provided that  
2 this paragraph shall not apply to any amounts received  
3 for services provided in selling prescription drugs or  
4 prosthetic devices[-]; provided further that this  
5 paragraph shall not apply to any amounts received by  
6 dispensaries established under section 46-1.5(28) for  
7 selling marijuana for medical use. As used in this  
8 paragraph:

9 "Prescription drugs" are those drugs defined  
10 under section 328-1 and dispensed by filling or  
11 refilling a written or oral prescription by a  
12 practitioner licensed under law to administer the drug  
13 and sold by a licensed pharmacist under section 328-16  
14 or practitioners licensed to administer drugs; and

15 "Prosthetic device" means any artificial device  
16 or appliance, instrument, apparatus, or contrivance,  
17 including their components, parts, accessories, and  
18 replacements thereof, used to replace a missing or  
19 surgically removed part of the human body, which is  
20 prescribed by a licensed practitioner of medicine,  
21 osteopathy, or podiatry and which is sold by the  
22 practitioner or which is dispensed and sold by a



1 dealer of prosthetic devices; provided that  
2 "prosthetic device" shall not mean any auditory,  
3 ophthalmic, dental, or ocular device or appliance,  
4 instrument, apparatus, or contrivance;

5 (8) Taxes on transient accommodations imposed by chapter  
6 237D and passed on and collected by operators holding  
7 certificates of registration under that chapter;

8 (9) Amounts received as dues by an unincorporated  
9 merchants association from its membership for  
10 advertising media, promotional, and advertising costs  
11 for the promotion of the association for the benefit  
12 of its members as a whole and not for the benefit of  
13 an individual member or group of members less than the  
14 entire membership;

15 (10) Amounts received by a labor organization for real  
16 property leased to:

17 (A) A labor organization; or

18 (B) A trust fund established by a labor organization  
19 for the benefit of its members, families, and  
20 dependents for medical or hospital care, pensions  
21 on retirement or death of employees,



1           apprenticeship and training, and other membership  
2           service programs.

3           As used in this paragraph, "labor organization" means  
4           a labor organization exempt from federal income tax  
5           under section 501(c)(5) of the Internal Revenue Code,  
6           as amended;

7       (11) Amounts received from foreign diplomats and consular  
8           officials who are holding cards issued or authorized  
9           by the United States Department of State granting them  
10          an exemption from state taxes; and

11       (12) Amounts received as rent for the rental or leasing of  
12          aircraft or aircraft engines used by the lessees or  
13          renters for interstate air transportation of  
14          passengers and goods. For purposes of this paragraph,  
15          payments made pursuant to a lease shall be considered  
16          rent regardless of whether the lease is an operating  
17          lease or a financing lease. The definition of  
18          "interstate air transportation" is the same as in 49  
19          U.S.C. 40102."

20       SECTION 3. Statutory material to be repealed is bracketed  
21       and stricken. New statutory material is underscored.





1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Will Evers  
J. Kelvin Egel  
R. M. Hanson  
J. L. ...



**Report Title:**

Counties; Medical Marijuana Dispensaries

**Description:**

Provides that each county has the power to establish medical marijuana dispensaries. Requires that medical marijuana dispensaries shall only provide service to qualified patients and primary caregivers registered with the department of public safety. Makes dispensaries subject to the general excise tax by making inapplicable the exemption for amounts received from sales of prescription drugs or prosthetic devices.

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