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# A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1           SECTION 1. The legislature finds that some political  
2 subdivisions below the state level often consider implementing  
3 regulations that are already the responsibility of the state and  
4 federal government. This creates multiple layers of bureaucracy  
5 that impede statewide economic development related to trade and  
6 production by creating a patchwork quilt of laws for businesses  
7 to follow. Often, such regulations conflict with existing state  
8 and federal law and can be considered unconstitutional under the  
9 commerce clause of the United States Constitution. In addition,  
10 the counties lack the necessary expertise and resources to  
11 ensure enforcement of duplicative and costly ordinances.

12           The purpose of this Act is to clarify that no county shall  
13 enact ordinances that conflict with the spirit and intent of  
14 state and federal legislative jurisdiction and regulatory  
15 authority.

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



1           "§46-1.5   General powers and limitation of the counties.

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

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

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

18          (3)   Each county shall have the power to enforce all claims  
19                on behalf of the county and approve all lawful claims  
20                against the county, but shall be prohibited from  
21                entering into, granting, or making in any manner any  
22                contract, authorization, allowance payment, or



1 liability contrary to the provisions of any county  
2 charter or general law;

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

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

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

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

18 (C) Construct, acquire by gift, purchase, or by the  
19 exercise of eminent domain, reconstruct, improve,  
20 better, extend, and maintain projects or  
21 undertakings for the control of and protection  
22 against floods and flood waters, including the



1 power to drain and rehabilitate lands already  
2 flooded; and

3 (D) Enact zoning ordinances providing that lands  
4 deemed subject to seasonable, periodic, or  
5 occasional flooding shall not be used for  
6 residence or other purposes in a manner as to  
7 endanger the health or safety of the occupants  
8 thereof, as required by the Federal Flood  
9 Insurance Act of 1956 (chapter 1025, Public Law  
10 1016);

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

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

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

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



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

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

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



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

8       (13) Each county shall have the power to enact ordinances  
9           deemed necessary to [~~protect health, life, and~~  
10          ~~property, and to preserve~~];

11           (A) Protect property; or

12           (B) Preserve the order and security of the county and  
13           its inhabitants;

14           on any subject or matter not inconsistent with, or  
15           tending to defeat, the intent of any state [~~statute~~  
16          ~~where the~~] or federal statute, rule, or regulation  
17           that does not disclose an express or implied intent  
18           that the statute, rule, or regulation shall be  
19           exclusive or uniform throughout the State;

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

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



- 1           (i) Local police matters;
- 2           (ii) Matters of sanitation;
- 3           (iii) Matters of inspection of buildings;
- 4           (iv) Matters of condemnation of unsafe
- 5                 structures, plumbing, sewers, dairies, milk,
- 6                 fish, and morgues; and
- 7           (v) Matters of the collection and disposition of
- 8                 rubbish and garbage;
- 9           (B) Provide exemptions for homeless facilities and
- 10                 any other program for the homeless authorized by
- 11                 part XVII of chapter 346, for all matters under
- 12                 this paragraph;
- 13           (C) Appoint county physicians and sanitary and other
- 14                 inspectors as necessary to carry into effect
- 15                 ordinances made under this paragraph, who shall
- 16                 have the same power as given by law to agents of
- 17                 the department of health, subject only to
- 18                 limitations placed on them by the terms and
- 19                 conditions of their appointments; and
- 20           (D) Fix a penalty for the violation of any ordinance,
- 21                 which penalty may be a misdemeanor, petty



1.                   misdemeanor, or violation as defined by general  
2                   law;

3           (15) Each county shall have the power to provide public  
4           pounds; to regulate the impounding of stray animals  
5           and fowl, and their disposition; and to provide for  
6           the appointment, powers, duties, and fees of animal  
7           control officers;

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

14           (A) Any property held for school purposes may not be  
15           disposed of without the consent of the  
16           superintendent of education;

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

19           (C) All proceeds from the sale of park lands shall be  
20           expended only for the acquisition of property for  
21           park or recreational purposes;





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

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

8                   (A) Community promotion and public celebrations;

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

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

14                   (D) The rendering of civic tribute to individuals  
15                   who, by virtue of their accomplishments and  
16                   community service, merit civic commendations,  
17                   recognition, or remembrance;

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

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

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

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

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

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

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



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



1 violation have been made upon the violator. Any  
2 administratively imposed civil fine shall not be  
3 collected until after an opportunity for a  
4 hearing under chapter 91. Any appeal shall be  
5 filed within thirty days from the date of the  
6 final written decision. These proceedings shall  
7 not be a prerequisite for any civil fine or  
8 injunctive relief ordered by the circuit court;

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



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



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



1 collection of unpaid civil fines authorized in  
2 this paragraph shall be in addition to any other  
3 procedures for collection available to the State  
4 and county by law or rules of the courts;

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



1 mark of any type intentionally created by paint,  
2 ink, chalk, dye, or similar substances;

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

- 13 (i) The nature and egregiousness of the  
14 violation;
- 15 (ii) The duration of the violation;
- 16 (iii) The number of recurring and other similar  
17 violations;
- 18 (iv) Any effort taken by the violator to correct  
19 the violation;
- 20 (v) The degree of involvement in causing or  
21 continuing the violation;



1 (vi) Reasons for any delay in the completion of  
2 the appeal; and

3 (vii) Other extenuating circumstances.

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

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



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

6 (25) Any law to the contrary notwithstanding, any county  
7 mayor, by executive order, may exempt donors, provider  
8 agencies, homeless facilities, and any other program  
9 for the homeless under part XVII of chapter 346 from  
10 real property taxes, water and sewer development fees,  
11 rates collected for water supplied to consumers and  
12 for use of sewers, and any other county taxes,  
13 charges, or fees; provided that any county may enact  
14 ordinances to regulate and grant the exemptions  
15 granted by this paragraph;

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

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

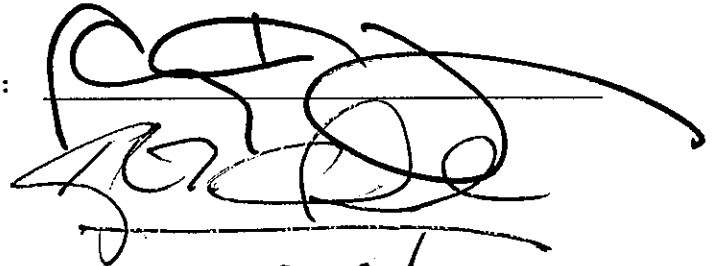
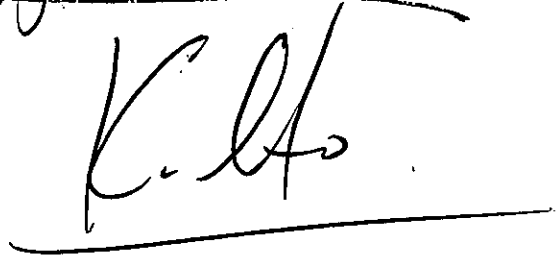
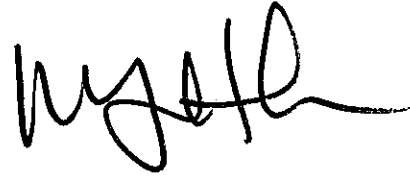
20 SECTION 3. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



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

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INTRODUCED BY:

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JAN 23 2013



# H.B. NO. 1096

**Report Title:**

County Ordinances on Property, Order, and Security; Conflicts with State and Federal Laws

**Description:**

Expressly prohibits the enactment of county ordinances relating to the protection of property and the order and security of inhabitants, if the ordinances conflict with the intent of state or federal statutes, rules, or regulations.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

