
A BILL FOR AN ACT

RELATING TO STORMWATER MANAGEMENT.

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

1 SECTION 1. The purpose of this Act is to encourage the
2 protection of water resources by:

3 (1) Authorizing counties to charge user fees to create and
4 maintain stormwater management systems or
5 infrastructure; and

6 (2) Directing the director of health to establish a
7 working committee to prepare a work plan to support
8 stormwater management systems and infrastructure in
9 the State.

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

12 "**§46-1.5 General powers and limitation of the counties.**

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

16 (1) Each county shall have the power to frame and adopt a
17 charter for its own self-government that shall
18 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); and

4 (E) Establish and charge user fees to create and
5 maintain any stormwater management system or
6 infrastructure;

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

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

13 (8) Each county shall have the power to fix the fees and
14 charges for all official services not otherwise
15 provided for;

16 (9) Each county shall have the power to provide by
17 ordinance assessments for the improvement or
18 maintenance of districts within the county;

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



- 1 (11) Where not within the jurisdiction of the public
2 utilities commission, each county shall have the power
3 to regulate by ordinance the operation of motor
4 vehicle common carriers transporting passengers within
5 the county and adopt and amend rules the county deems
6 necessary for the public convenience and necessity;
- 7 (12) Each county shall have the power to enact and enforce
8 ordinances necessary to prevent or summarily remove
9 public nuisances and to compel the clearing or removal
10 of any public nuisance, refuse, and uncultivated
11 undergrowth from streets, sidewalks, public places,
12 and unoccupied lots. In connection with these powers,
13 each county may impose and enforce liens upon the
14 property for the cost to the county of removing and
15 completing the necessary work where the property
16 owners fail, after reasonable notice, to comply with
17 the ordinances. The authority provided by this
18 paragraph shall not be self-executing, but shall
19 become fully effective within a county only upon the
20 enactment or adoption by the county of appropriate and
21 particular laws, ordinances, or rules defining "public
22 nuisances" with respect to each county's respective



- 1 circumstances. The counties shall provide the
2 property owner with the opportunity to contest the
3 summary action and to recover the owner's property;
- 4 (13) Each county shall have the power to enact ordinances
5 deemed necessary to protect health, life, and
6 property, and to preserve the order and security of
7 the county and its inhabitants on any subject or
8 matter not inconsistent with, or tending to defeat,
9 the intent of any state statute where the statute does
10 not disclose an express or implied intent that the
11 statute shall be exclusive or uniform throughout the
12 State;
- 13 (14) Each county shall have the power to:
- 14 (A) Make and enforce within the limits of the county
15 all necessary ordinances covering all:
- 16 (i) Local police matters;
- 17 (ii) Matters of sanitation;
- 18 (iii) Matters of inspection of buildings;
- 19 (iv) Matters of condemnation of unsafe
20 structures, plumbing, sewers, dairies, milk,
21 fish, and morgues; and



- 1 (v) Matters of the collection and disposition of
- 2 rubbish and garbage;
- 3 (B) Provide exemptions for homeless facilities and
- 4 any other program for the homeless authorized by
- 5 part XVII of chapter 346, for all matters under
- 6 this paragraph;
- 7 (C) Appoint county physicians and sanitary and other
- 8 inspectors as necessary to carry into effect
- 9 ordinances made under this paragraph, who shall
- 10 have the same power as given by law to agents of
- 11 the department of health, subject only to
- 12 limitations placed on them by the terms and
- 13 conditions of their appointments; and
- 14 (D) Fix a penalty for the violation of any ordinance,
- 15 which penalty may be a misdemeanor, petty
- 16 misdemeanor, or violation as defined by general
- 17 law;
- 18 (15) Each county shall have the power to provide public
- 19 pounds; to regulate the impounding of stray animals
- 20 and fowl, and their disposition; and to provide for
- 21 the appointment, powers, duties, and fees of animal
- 22 control officers;



- 1 (16) Each county shall have the power to purchase and
2 otherwise acquire, lease, and hold real and personal
3 property within the defined boundaries of the county
4 and to dispose of the real and personal property as
5 the interests of the inhabitants of the county may
6 require, except that:
- 7 (A) Any property held for school purposes may not be
8 disposed of without the consent of the
9 superintendent of education;
- 10 (B) No property bordering the ocean shall be sold or
11 otherwise disposed of; and
- 12 (C) All proceeds from the sale of park lands shall be
13 expended only for the acquisition of property for
14 park or recreational purposes;
- 15 (17) Each county shall have the power to provide by charter
16 for the prosecution of all offenses and to prosecute
17 for offenses against the laws of the State under the
18 authority of the attorney general of the State;
- 19 (18) Each county shall have the power to make
20 appropriations in amounts deemed appropriate from any
21 moneys in the treasury, for the purpose of:
- 22 (A) Community promotion and public celebrations;



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

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

6 (D) The rendering of civic tribute to individuals
7 who, by virtue of their accomplishments and
8 community service, merit civic commendations,
9 recognition, or remembrance;

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

11 (A) Construct, purchase, take on lease, lease,
12 sublease, or in any other manner acquire, manage,
13 maintain, or dispose of buildings for county
14 purposes, sewers, sewer systems, pumping
15 stations, waterworks, including reservoirs,
16 wells, pipelines, and other conduits for
17 distributing water to the public, lighting
18 plants, and apparatus and appliances for lighting
19 streets and public buildings, and manage,
20 regulate, and control the same;

21 (B) Regulate and control the location and quality of
22 all appliances necessary to the furnishing of



- 1 water, heat, light, power, telephone, and
2 telecommunications service to the county;
- 3 (C) Acquire, regulate, and control any and all
4 appliances for the sprinkling and cleaning of the
5 streets and the public ways, and for flushing the
6 sewers; and
- 7 (D) Open, close, construct, or maintain county
8 highways or charge toll on county highways;
9 provided that all revenues received from a toll
10 charge shall be used for the construction or
11 maintenance of county highways;
- 12 (20) Each county shall have the power to regulate the
13 renting, subletting, and rental conditions of property
14 for places of abode by ordinance;
- 15 (21) Unless otherwise provided by law, each county shall
16 have the power to establish by ordinance the order of
17 succession of county officials in the event of a
18 military or civil disaster;
- 19 (22) Each county shall have the power to sue and be sued in
20 its corporate name;
- 21 (23) Each county shall have the power to establish and
22 maintain waterworks and sewer works; to collect rates



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

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



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



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



1 daily increase of the fine. The county shall not
2 be required to include a social security number,
3 state general excise taxpayer identification
4 number, or federal employer identification number
5 on the notice. Recordation of the notice in the
6 bureau of conveyances shall be deemed, at such
7 time, for all purposes and without any further
8 action, to procure a lien on land registered in
9 land court under chapter 501. After the unpaid
10 civil fines are added to the taxes, fees, or
11 charges as specified by county ordinance, the
12 unpaid civil fines shall be deemed immediately
13 due, owing, and delinquent and may be collected
14 in any lawful manner. The procedure for
15 collection of unpaid civil fines authorized in
16 this paragraph shall be in addition to any other
17 procedures for collection available to the State
18 and county by law or rules of the courts;
19 (C) Each county may impose civil fines upon any
20 person who places graffiti on any real or
21 personal property owned, managed, or maintained
22 by the county. The fine may be up to \$1,000 or



1 may be equal to the actual cost of having the
2 damaged property repaired or replaced. The
3 parent or guardian having custody of a minor who
4 places graffiti on any real or personal property
5 owned, managed, or maintained by the county shall
6 be jointly and severally liable with the minor
7 for any civil fines imposed hereunder. Any such
8 fine may be administratively imposed after an
9 opportunity for a hearing under chapter 91, but
10 such a proceeding shall not be a prerequisite for
11 any civil fine ordered by any court. As used in
12 this subparagraph, "graffiti" means any
13 unauthorized drawing, inscription, figure, or
14 mark of any type intentionally created by paint,
15 ink, chalk, dye, or similar substances;

16 (D) At the completion of an appeal in which the
17 county's enforcement action is affirmed and upon
18 correction of the violation if requested by the
19 violation, the case shall be reviewed by the
20 county agency that imposed the civil fines to
21 determine the appropriateness of the amount of
22 the civil fines that accrued while the appeal



1 proceedings were pending. In its review of the
2 amount of the accrued fines, the county agency
3 may consider:

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

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

- 21 (E) After completion of a review of the amount of
22 accrued civil fine by the county agency that



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

13 (F) If no county agency exists to conduct appeal
14 proceedings for a particular civil fine action
15 taken by the county, then one shall be
16 established by ordinance before the county shall
17 impose the civil fine;

18 (25) Any law to the contrary notwithstanding, any county
19 mayor, by executive order, may exempt donors, provider
20 agencies, homeless facilities, and any other program
21 for the homeless under part XVII of chapter 346 from
22 real property taxes, water and sewer development fees,



1 rates collected for water supplied to consumers and
2 for use of sewers, and any other county taxes,
3 charges, or fees; provided that any county may enact
4 ordinances to regulate and grant the exemptions
5 granted by this paragraph;

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

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

10 SECTION 3. (a) The director of health shall convene and
11 chair a working committee in conjunction with the ocean resource
12 management plan working group on water quality. The working
13 committee shall include:

14 (1) A representative from each county;

15 (2) The chairperson of the board of land and natural
16 resources, or the chairperson's designee;

17 (3) The chairperson of the commission on water resource
18 management, or the chairperson's designee;

19 (4) The chairperson of the board of agriculture, or the
20 chairperson's designee; and

21 (5) The director of the office of planning, or the
22 director's designee.



1 The director of health shall invite representatives of
2 relevant federal agencies including the Environmental Protection
3 Agency, National Resources Conservation Service, and United
4 States Army to participate in the working committee. The
5 director may invite private land owners and experts in the field
6 of water resource management to participate in the working
7 committee.

8 (b) The working committee shall organize, meet, and
9 prepare a work plan to support stormwater management systems and
10 infrastructure in the State. The work of the commission on
11 water resources management shall provide a framework for the
12 work plan.

13 The working committee shall investigate alternative models
14 and methods of financing used throughout the United States
15 including stormwater utilities and improvement districts. The
16 working committee may contract for services as needed.

17 The working committee shall submit a report of its
18 findings, recommendations, and any proposed legislation to the
19 legislature no later than twenty days before the convening of
20 the regular session of 2016.

21 SECTION 4. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$ or so much



1 thereof as may be necessary for fiscal year 2014-2015 to convene
2 a working committee to prepare a work plan to support stormwater
3 management systems and infrastructure in the State.

4 The sum appropriated shall be expended by the department of
5 health for the purposes of this Act.

6 SECTION 5. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Stormwater Management; Counties; User Fees

Description:

Authorizes the counties to establish and charge user fees for stormwater management. Creates a working committee in the Department of Health to prepare a work plan to support storm water management systems and infrastructure. Appropriates funds. Effective July 1, 2050. (HB2204 HD1)

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