

JAN 23 2014

S.B. NO. 3094

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



S.B. NO. 3094

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;



S.B. NO. 3094

- 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 part XVII of chapter 346, for all matters under
18 this 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 take over from
14 the State existing waterworks systems, including water
15 rights, pipelines, and other appurtenances belonging
16 thereto, and sewer systems, and to enlarge, develop,
17 and improve the same; to collect rates for water
18 supplied to consumers and for the use of sewers; and
19 to install water meters whenever deemed expedient;
20 provided that [owners]:

21 (A) Owners of premises having vested water rights
22 under existing laws appurtenant to the premises

1 shall not be charged for the installation or use
2 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~~
6 ~~systems, and to enlarge, develop, and improve the~~
7 ~~same,]~~

8 (B) Each county may impose and enforce liens upon the
9 premises served for any unpaid water or sewer
10 charges in excess of \$ _____ where the
11 premises owner fails, after reasonable notice, to
12 make payment and after being given an opportunity
13 for a hearing pursuant to chapter 91; provided
14 that the lien may be enforced against the entire
15 unpaid amount; and

16 (C) The authority provided by subparagraph (B) shall
17 take effect in a county only upon the enactment
18 or adoption of laws, ordinances, or rules by the
19 county to impose and enforce liens in accordance
20 with subparagraph (B);

21 (24) (A) Each county may impose civil fines, in addition
22 to criminal penalties, for any violation of



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

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



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



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



1 due, owing, and delinquent and may be collected
2 in any lawful manner. The procedure for
3 collection of unpaid civil fines authorized in
4 this paragraph shall be in addition to any other
5 procedures for collection available to the State
6 and county by law or rules of the courts;

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



1 unauthorized drawing, inscription, figure, or
2 mark of any type intentionally created by paint,
3 ink, chalk, dye, or similar substances;

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

- 14 (i) The nature and egregiousness of the
- 15 violation;
- 16 (ii) The duration of the violation;
- 17 (iii) The number of recurring and other similar
- 18 violations;
- 19 (iv) Any effort taken by the violator to correct
- 20 the violation;
- 21 (v) The degree of involvement in causing or
- 22 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 2. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22



1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Gilbert Kohler SR



S.B. NO. 3094

Report Title:

Counties; Liens; Water; Sewer

Description:

Empowers counties to impose and enforce liens upon premises served for unpaid water or sewer charges in excess of a certain amount after an opportunity to be heard under chapter 91, HRS.

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

