
A BILL FOR AN ACT

RELATING TO GRAFFITI.

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



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work is a private responsibility, the
responsibility may be enforced by the county in
lieu of the work being done at public expense;
(C) Construct, acquire by gift, purchase, or by the
exercise of eminent domain, reconstruct, improve,
better, extend, and maintain projects or
undertakings for the control of and protection
against floods and flood waters, including the
power to drain and rehabilitate lands already
flooded; and
(D) Enact zoning ordinances providing that lands
deemed subject to seasonable, periodic, or
occasional flooding shall not be used for
residence or other purposes in a manner as to
endanger the health or safety of the occupants
thereof, as required by the Federal Flood
Insurance Act of 1956 (chapter 1025, Public Law
1016);
(6) Each county shall have the power to exercise the power
of condemnation by eminent domain when it is in the
public interest to do so;

- 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



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

18 (13) Each county shall have the power to enact ordinances
19 deemed necessary to protect health, life, and
20 property, and to preserve the order and security of
21 the county and its inhabitants on any subject or



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

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

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

9 (i) Local police matters;

10 (ii) Matters of sanitation;

11 (iii) Matters of inspection of buildings;

12 (iv) Matters of condemnation of unsafe
13 structures, plumbing, sewers, dairies, milk,
14 fish, and morgues; and

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

17 (B) Provide exemptions for homeless facilities and
18 any other program for the homeless authorized by
19 part XVII of chapter 346, for all matters under
20 this 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



1 the interests of the inhabitants of the county may
2 require, except that:

3 (A) Any property held for school purposes may not be
4 disposed of without the consent of the
5 superintendent of education;

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

8 (C) All proceeds from the sale of park lands shall be
9 expended only for the acquisition of property for
10 park or recreational purposes;

11 (17) Each county shall have the power to provide by charter
12 for the prosecution of all offenses and to prosecute
13 for offenses against the laws of the State under the
14 authority of the attorney general of the State;

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

18 (A) Community promotion and public celebrations;

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



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

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

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

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

19 (B) Regulate and control the location and quality of
20 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;



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

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



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



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



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



1 procedures for collection available to the State
2 and county by law or rules of the courts;

3 (C) Each county may impose civil fines upon any
4 person who places graffiti on any real or
5 personal property owned, managed, or maintained
6 by the county. The fine may be up to [~~\$1,000~~
7 \$1,500 or may be equal to the actual cost of
8 having the damaged property repaired or replaced.
9 The parent or guardian having custody of a minor
10 who places graffiti on any real or personal
11 property owned, managed, or maintained by the
12 county shall be jointly and severally liable with
13 the minor for any civil fines imposed hereunder.
14 Any such fine may be administratively imposed
15 after an opportunity for a hearing under chapter
16 91, but such a proceeding shall not be a
17 prerequisite for any civil fine ordered by any
18 court. As used in this subparagraph, "graffiti"
19 means any unauthorized drawing, inscription,
20 figure, or mark of any type intentionally created
21 by paint, ink, chalk, dye, or similar substances;



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

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



1 (vii) Other extenuating circumstances.

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

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



1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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



Report Title:
Graffiti; Fines

Description:
Increases civil fines for causing property damage by graffiti.
(HB639 HD1)

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

