

JAN 22 2015

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



S.B. NO. 110

1 work is a private responsibility, the
2 responsibility may be enforced by the county in
3 lieu of the work being done at public expense;

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

11 (D) Enact zoning ordinances providing that lands
12 deemed subject to seasonable, periodic, or
13 occasional flooding shall not be used for
14 residence or other purposes in a manner as to
15 endanger the health or safety of the occupants
16 thereof, as required by the Federal Flood
17 Insurance Act of 1956 (chapter 1025, Public Law
18 1016);

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



S.B. NO. 110

- 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;



S.B. NO. 110

- 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



S.B. NO. 110

- 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;



S.B. NO. 110

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; and to install water meters whenever deemed
5 expedient; provided that [owners]:

6 (A) Owners of premises having vested water rights
7 under existing laws appurtenant to the premises
8 shall not be charged for the installation or use
9 of the water meters on the premises; [~~to take~~
10 ~~over from the State existing waterworks systems,~~
11 ~~including water rights, pipelines, and other~~
12 ~~appurtenances belonging thereto, and sewer~~
13 ~~systems, and to enlarge, develop, and improve the~~
14 ~~same;~~]

15 (B) Each county may impose and enforce liens upon the
16 premises served for any unpaid water or sewer
17 charges where the premises owner fails, after
18 reasonable notice, to make payment and after
19 being given an opportunity for a hearing pursuant
20 to chapter 91; provided that the lien may be
21 enforced against the entire unpaid amount; and



1 (C) The authority provided by subparagraph (B) shall
2 take effect in a county only upon the ordainment
3 or adoption of ordinances or rules by the county
4 to impose and enforce liens in accordance with
5 subparagraph (B);

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

18 (B) Each county by ordinance may provide for the
19 addition of any unpaid civil fines, ordered by
20 any court of competent jurisdiction, to any
21 taxes, fees, or charges, with the exception of



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



1 recordation of a notice of unpaid civil fines in
2 the bureau of conveyances, the amount of the
3 civil fines, including any increase in the amount
4 of the fine which the county may assess, shall
5 constitute a lien upon all real property or
6 rights to real property belonging to any person
7 liable for the unpaid civil fines. The lien in
8 favor of the county shall be subordinate to any
9 lien in favor of any person recorded or
10 registered prior to the recordation of the notice
11 of unpaid civil fines and senior to any lien
12 recorded or registered after the recordation of
13 the notice. The lien shall continue until the
14 unpaid civil fines are paid in full or until a
15 certificate of release or partial release of the
16 lien, prepared by the county at the owner's
17 expense, is recorded. The notice of unpaid civil
18 fines shall state the amount of the fine as of
19 the date of the notice and maximum permissible
20 daily increase of the fine. The county shall not
21 be required to include a social security number,



S.B. NO. 110

1 state general excise taxpayer identification
2 number, or federal employer identification number
3 on the notice. Recordation of the notice in the
4 bureau of conveyances shall be deemed, at such
5 time, for all purposes and without any further
6 action, to procure a lien on land registered in
7 land court under chapter 501. After the unpaid
8 civil fines are added to the taxes, fees, or
9 charges as specified by county ordinance, the
10 unpaid civil fines shall be deemed immediately
11 due, owing, and delinquent and may be collected
12 in any lawful manner. The procedure for
13 collection of unpaid civil fines authorized in
14 this paragraph shall be in addition to any other
15 procedures for collection available to the State
16 and county by law or rules of the courts;

17 (C) Each county may impose civil fines upon any
18 person who places graffiti on any real or
19 personal property owned, managed, or maintained
20 by the county. The fine may be up to \$1,000 or
21 may be equal to the actual cost of having the



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

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

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

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

20 (25) Any law to the contrary notwithstanding, any county
21 mayor, by executive order, may exempt donors, provider



S.B. NO. 110

1 agencies, homeless facilities, and any other program
2 for the homeless under part XVII of chapter 346 from
3 real property taxes, water and sewer development fees,
4 rates collected for water supplied to consumers and
5 for use of sewers, and any other county taxes,
6 charges, or fees; provided that any county may enact
7 ordinances to regulate and grant the exemptions
8 granted by this paragraph;

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

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

13 SECTION 2. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 3. This Act shall take effect on July 1, 2015.

16

INTRODUCED BY: *Roll E. P. [Signature]* BR



S.B. NO. 110

Report Title:

Counties; Liens; Water and Sewer Charges; Waterworks Systems;
Sewer Systems

Description:

Empowers counties to impose and enforce liens upon premises served for unpaid water or sewer charges after an opportunity to be heard under chapter 91, Hawaii Revised Statutes. Repeals the authority of each county to take over from the State existing waterworks systems and sewer systems and to enlarge, develop, and improve the same.

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

