

JAN 25 2017

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# A BILL FOR AN ACT

RELATING TO INFRASTRUCTURE DEVELOPMENT.

**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



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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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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;

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); and

19 (E) Establish and charge user fees to create and  
20 maintain any stormwater management system or  
21 infrastructure;



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- 1           (6) Each county shall have the power to exercise the power  
2           of condemnation by eminent domain when it is in the  
3           public interest to do so;
- 4           (7) Each county shall have the power to exercise  
5           regulatory powers over business activity as are  
6           assigned to them by chapter 445 or other general law;
- 7           (8) Each county shall have the power to fix the fees and  
8           charges for all official services not otherwise  
9           provided for;
- 10          (9) Each county shall have the power to provide by  
11          ordinance assessments for the improvement or  
12          maintenance of districts within the county;
- 13          (10) Except as otherwise provided, no county shall have the  
14          power to give or loan credit to, or in aid of, any  
15          person or corporation, directly or indirectly, except  
16          for a public purpose;
- 17          (11) Where not within the jurisdiction of the public  
18          utilities commission, each county shall have the power  
19          to regulate by ordinance the operation of motor  
20          vehicle common carriers transporting passengers within



1 the county and adopt and amend rules the county deems  
2 necessary for the public convenience and necessity;

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



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1           (13) Each county shall have the power to enact ordinances  
2           deemed necessary to protect health, life, and  
3           property, and to preserve the order and security of  
4           the county and its inhabitants on any subject or  
5           matter not inconsistent with, or tending to defeat,  
6           the intent of any state statute where the statute does  
7           not disclose an express or implied intent that the  
8           statute shall be exclusive or uniform throughout the  
9           State;

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

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

13                   (i) Local police matters;

14                   (ii) Matters of sanitation;

15                   (iii) Matters of inspection of buildings;

16                   (iv) Matters of condemnation of unsafe  
17                   structures, plumbing, sewers, dairies, milk,  
18                   fish, and morgues; and

19                   (v) Matters of the collection and disposition of  
20                   rubbish and garbage;



1 (B) Provide exemptions for homeless facilities and  
2 any other program for the homeless authorized by  
3 part XVII of chapter 346, for all matters under  
4 this paragraph;

5 (C) Appoint county physicians and sanitary and other  
6 inspectors as necessary to carry into effect  
7 ordinances made under this paragraph, who shall  
8 have the same power as given by law to agents of  
9 the department of health, subject only to  
10 limitations placed on them by the terms and  
11 conditions of their appointments; and

12 (D) Fix a penalty for the violation of any ordinance,  
13 which penalty may be a misdemeanor, petty  
14 misdemeanor, or violation as defined by general  
15 law;

16 (15) Each county shall have the power to provide public  
17 pounds; to regulate the impounding of stray animals  
18 and fowl, and their disposition; and to provide for  
19 the appointment, powers, duties, and fees of animal  
20 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:





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- 1 (A) Community promotion and public celebrations;
- 2 (B) The entertainment of distinguished persons as may
- 3 from time to time visit the county;
- 4 (C) The entertainment of other distinguished persons,
- 5 as well as, public officials when deemed to be in
- 6 the best interest of the community; and
- 7 (D) The rendering of civic tribute to individuals
- 8 who, by virtue of their accomplishments and
- 9 community service, merit civic commendations,
- 10 recognition, or remembrance;
- 11 (19) Each county shall have the power to:
- 12 (A) Construct, purchase, take on lease, lease,
- 13 sublease, or in any other manner acquire, manage,
- 14 maintain, or dispose of buildings for county
- 15 purposes, sewers, sewer systems, pumping
- 16 stations, waterworks, including reservoirs,
- 17 wells, pipelines, and other conduits for
- 18 distributing water to the public, lighting
- 19 plants, and apparatus and appliances for lighting
- 20 streets and public buildings, and manage,
- 21 regulate, and control the same;



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- 1 (B) Regulate and control the location and quality of  
2 all appliances necessary to the furnishing of  
3 water, heat, light, power, telephone, and  
4 telecommunications service to the county;
- 5 (C) Acquire, regulate, and control any and all  
6 appliances for the sprinkling and cleaning of the  
7 streets and the public ways, and for flushing the  
8 sewers; ~~and~~
- 9 (D) Open, close, construct, or maintain county  
10 highways or charge toll on county highways;  
11 provided that all revenues received from a toll  
12 charge shall be used for the construction or  
13 maintenance of county highways; and
- 14 (E) Develop public-private partnerships to construct  
15 relief sewers for affordable housing development  
16 projects;
- 17 (20) Each county shall have the power to regulate the  
18 renting, subletting, and rental conditions of property  
19 for places of abode by ordinance;
- 20 (21) Unless otherwise provided by law, each county shall  
21 have the power to establish by ordinance the order of



1            succession of county officials in the event of a  
2            military or civil disaster;

3            (22) Each county shall have the power to sue and be sued in  
4            its corporate name;

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

17           (24) (A) Each county may impose civil fines, in addition  
18           to criminal penalties, for any violation of  
19           county ordinances or rules after reasonable  
20           notice and requests to correct or cease the  
21           violation have been made upon the violator. Any



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

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



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



1           this subparagraph, "graffiti" means any  
2           unauthorized drawing, inscription, figure, or  
3           mark of any type intentionally created by paint,  
4           ink, chalk, dye, or similar substances;

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

- 15           (i) The nature and egregiousness of the  
16           violation;
- 17           (ii) The duration of the violation;
- 18           (iii) The number of recurring and other similar  
19           violations;
- 20           (iv) Any effort taken by the violator to correct  
21           the violation;





- 1 (v) The degree of involvement in causing or
- 2 continuing the violation;
- 3 (vi) Reasons for any delay in the completion of
- 4 the appeal; and
- 5 (vii) Other extenuating circumstances.

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

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



1           become due and collectible following reasonable  
2           notice to the violator, at the completion of all  
3           appeal proceedings;

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

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

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



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

3 SECTION 2. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

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

6

INTRODUCED BY:

  
Will Egan

  
Dan Claitor



# S.B. NO. 1210

**Report Title:**

Affordable Housing Development Projects; Relief Sewers; Public-private Partnerships; Counties

**Description:**

Authorizes counties to develop public-private partnerships to construct relief sewers for affordable housing development projects.

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

