
A BILL FOR AN ACT

RELATING TO INFRASTRUCTURE DEVELOPMENT.

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

1 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§46- Oversight of public-private partnerships. The
5 of each county shall oversee any public-private
6 partnerships entered into by the county with any private entity
7 pursuant to this chapter."

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

10 "**§46-1.5 General powers and limitation of the counties.**

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

14 (1) Each county shall have the power to frame and adopt a
15 charter for its own self-government that shall
16 establish the county executive, administrative, and
17 legislative structure and organization, including but
18 not limited to the method of appointment or election



1 of officials, their duties, responsibilities, and
2 compensation, and the terms of their office;

3 (2) Each county shall have the power to provide for and
4 regulate the marking and lighting of all buildings and
5 other structures that may be obstructions or hazards
6 to aerial navigation, so far as may be necessary or
7 proper for the protection and safeguarding of life,
8 health, and property;

9 (3) Each county shall have the power to enforce all claims
10 on behalf of the county and approve all lawful claims
11 against the county, but shall be prohibited from
12 entering into, granting, or making in any manner any
13 contract, authorization, allowance payment, or
14 liability contrary to the provisions of any county
15 charter or general law;

16 (4) Each county shall have the power to make contracts and
17 to do all things necessary and proper to carry into
18 execution all powers vested in the county or any
19 county officer;

20 (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;
- 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



- 1 endanger the health or safety of the occupants
2 thereof, as required by the Federal Flood
3 Insurance Act of 1956 (chapter 1025, Public Law
4 1016); and
- 5 (E) Establish and charge user fees to create and
6 maintain any stormwater management system or
7 infrastructure;
- 8 (6) Each county shall have the power to exercise the power
9 of condemnation by eminent domain when it is in the
10 public interest to do so;
- 11 (7) Each county shall have the power to exercise
12 regulatory powers over business activity as are
13 assigned to them by chapter 445 or other general law;
- 14 (8) Each county shall have the power to fix the fees and
15 charges for all official services not otherwise
16 provided for;
- 17 (9) Each county shall have the power to provide by
18 ordinance assessments for the improvement or
19 maintenance of districts within the county;
- 20 (10) Except as otherwise provided, no county shall have the
21 power to give or loan credit to, or in aid of, any



1 person or corporation, directly or indirectly, except
2 for a public purpose;

3 (11) Where not within the jurisdiction of the public
4 utilities commission, each county shall have the power
5 to regulate by ordinance the operation of motor
6 vehicle common carriers transporting passengers within
7 the county and adopt and amend rules the county deems
8 necessary for the public convenience and necessity;

9 (12) Each county shall have the power to enact and enforce
10 ordinances necessary to prevent or summarily remove
11 public nuisances and to compel the clearing or removal
12 of any public nuisance, refuse, and uncultivated
13 undergrowth from streets, sidewalks, public places,
14 and unoccupied lots. In connection with these powers,
15 each county may impose and enforce liens upon the
16 property for the cost to the county of removing and
17 completing the necessary work where the property
18 owners fail, after reasonable notice, to comply with
19 the ordinances. The authority provided by this
20 paragraph shall not be self-executing, but shall
21 become fully effective within a county only upon the



1 enactment or adoption by the county of appropriate and
2 particular laws, ordinances, or rules defining "public
3 nuisances" with respect to each county's respective
4 circumstances. The counties shall provide the
5 property owner with the opportunity to contest the
6 summary action and to recover the owner's property;

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

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

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

19 (i) Local police matters;

20 (ii) Matters of sanitation;

21 (iii) Matters of inspection of buildings;



- 1 (iv) Matters of condemnation of unsafe
- 2 structures, plumbing, sewers, dairies, milk,
- 3 fish, and morgues; and
- 4 (v) Matters of the collection and disposition of
- 5 rubbish and garbage;
- 6 (B) Provide exemptions for homeless facilities and
- 7 any other program for the homeless authorized by
- 8 part XVII of chapter 346, for all matters under
- 9 this paragraph;
- 10 (C) Appoint county physicians and sanitary and other
- 11 inspectors as necessary to carry into effect
- 12 ordinances made under this paragraph, who shall
- 13 have the same power as given by law to agents of
- 14 the department of health, subject only to
- 15 limitations placed on them by the terms and
- 16 conditions of their appointments; and
- 17 (D) Fix a penalty for the violation of any ordinance,
- 18 which penalty may be a misdemeanor, petty
- 19 misdemeanor, or violation as defined by general
- 20 law;



1 (15) Each county shall have the power to provide public
2 pounds; to regulate the impounding of stray animals
3 and fowl, and their disposition; and to provide for
4 the appointment, powers, duties, and fees of animal
5 control officers;

6 (16) Each county shall have the power to purchase and
7 otherwise acquire, lease, and hold real and personal
8 property within the defined boundaries of the county
9 and to dispose of the real and personal property as
10 the interests of the inhabitants of the county may
11 require, except that:

12 (A) Any property held for school purposes may not be
13 disposed of without the consent of the
14 superintendent of education;

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

17 (C) All proceeds from the sale of park lands shall be
18 expended only for the acquisition of property for
19 park or recreational purposes;

20 (17) Each county shall have the power to provide by charter
21 for the prosecution of all offenses and to prosecute

1 for offenses against the laws of the State under the
2 authority of the attorney general of the State;

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

6 (A) Community promotion and public celebrations;

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

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

12 (D) The rendering of civic tribute to individuals
13 who, by virtue of their accomplishments and
14 community service, merit civic commendations,
15 recognition, or remembrance;

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

17 (A) Construct, purchase, take on lease, lease,
18 sublease, or in any other manner acquire, manage,
19 maintain, or dispose of buildings for county
20 purposes, sewers, sewer systems, pumping
21 stations, waterworks, including reservoirs,



- 1 wells, pipelines, and other conduits for
2 distributing water to the public, lighting
3 plants, and apparatus and appliances for lighting
4 streets and public buildings, and manage,
5 regulate, and control the same;
- 6 (B) Regulate and control the location and quality of
7 all appliances necessary to the furnishing of
8 water, heat, light, power, telephone, and
9 telecommunications service to the county;
- 10 (C) Acquire, regulate, and control any and all
11 appliances for the sprinkling and cleaning of the
12 streets and the public ways, and for flushing the
13 sewers; [and]
- 14 (D) Open, close, construct, or maintain county
15 highways or charge toll on county highways;
16 provided that all revenues received from a toll
17 charge shall be used for the construction or
18 maintenance of county highways; and
- 19 (E) Develop public-private partnerships to construct
20 relief sewers for affordable housing development
21 projects;



- 1 (20) Each county shall have the power to regulate the
2 renting, subletting, and rental conditions of property
3 for places of abode by ordinance;
- 4 (21) Unless otherwise provided by law, each county shall
5 have the power to establish by ordinance the order of
6 succession of county officials in the event of a
7 military or civil disaster;
- 8 (22) Each county shall have the power to sue and be sued in
9 its corporate name;
- 10 (23) Each county shall have the power to establish and
11 maintain waterworks and sewer works; to collect rates
12 for water supplied to consumers and for the use of
13 sewers; to install water meters whenever deemed
14 expedient; provided that owners of premises having
15 vested water rights under existing laws appurtenant to
16 the premises shall not be charged for the installation
17 or use of the water meters on the premises; to take
18 over from the State existing waterworks systems,
19 including water rights, pipelines, and other
20 appurtenances belonging thereto, and sewer systems,
21 and to enlarge, develop, and improve the same;



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

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



1 review rights under section 91-14 are exhausted,
2 to any taxes, fees, or charges, with the
3 exception of water for residential use and sewer
4 charges, collected by the county. The ordinance
5 shall specify the administrative procedures for
6 the addition of the unpaid civil fines to the
7 eligible taxes, fees, or charges and may require
8 hearings or other proceedings. After addition of
9 the unpaid civil fines to the taxes, fees, or
10 charges, the unpaid civil fines shall not become
11 a part of any taxes, fees, or charges. The
12 county by ordinance may condition the issuance or
13 renewal of a license, approval, or permit for
14 which a fee or charge is assessed, except for
15 water for residential use and sewer charges, on
16 payment of the unpaid civil fines. Upon
17 recordation of a notice of unpaid civil fines in
18 the bureau of conveyances, the amount of the
19 civil fines, including any increase in the amount
20 of the fine which the county may assess, shall
21 constitute a lien upon all real property or



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



1 action, to procure a lien on land registered in
2 land court under chapter 501. After the unpaid
3 civil fines are added to the taxes, fees, or
4 charges as specified by county ordinance, the
5 unpaid civil fines shall be deemed immediately
6 due, owing, and delinquent and may be collected
7 in any lawful manner. The procedure for
8 collection of unpaid civil fines authorized in
9 this paragraph shall be in addition to any other
10 procedures for collection available to the State
11 and county by law or rules of the courts;

12 (C) Each county may impose civil fines upon any
13 person who places graffiti on any real or
14 personal property owned, managed, or maintained
15 by the county. The fine may be up to \$1,000 or
16 may be equal to the actual cost of having the
17 damaged property repaired or replaced. The
18 parent or guardian having custody of a minor who
19 places graffiti on any real or personal property
20 owned, managed, or maintained by the county shall
21 be jointly and severally liable with the minor



1 for any civil fines imposed hereunder. Any such
2 fine may be administratively imposed after an
3 opportunity for a hearing under chapter 91, but
4 such a proceeding shall not be a prerequisite for
5 any civil fine ordered by any court. As used in
6 this subparagraph, "graffiti" means any
7 unauthorized drawing, inscription, figure, or
8 mark of any type intentionally created by paint,
9 ink, chalk, dye, or similar substances;

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

20 (i) The nature and egregiousness of the
21 violation;



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

11 The civil fine that is imposed by administrative
12 order after this review is completed and the
13 violation is corrected shall be subject to
14 judicial review, notwithstanding any provisions
15 for administrative review in county charters;

16 (E) After completion of a review of the amount of
17 accrued civil fine by the county agency that
18 imposed the fine, the amount of the civil fine
19 determined appropriate, including both the
20 initial civil fine and any accrued daily civil
21 fine, shall immediately become due and



1 collectible following reasonable notice to the
2 violator. If no review of the accrued civil fine
3 is requested, the amount of the civil fine, not
4 to exceed the total accrual of civil fine prior
5 to correcting the violation, shall immediately
6 become due and collectible following reasonable
7 notice to the violator, at the completion of all
8 appeal proceedings;

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

14 (25) Any law to the contrary notwithstanding, any county
15 mayor, by executive order, may exempt donors, provider
16 agencies, homeless facilities, and any other program
17 for the homeless under part XVII of chapter 346 from
18 real property taxes, water and sewer development fees,
19 rates collected for water supplied to consumers and
20 for use of sewers, and any other county taxes,
21 charges, or fees; provided that any county may enact



1 ordinances to regulate and grant the exemptions
2 granted by this paragraph;
3 (26) Any county may establish a captive insurance company
4 pursuant to article 19, chapter 431; and
5 (27) Each county shall have the power to enact and enforce
6 ordinances regulating towing operations."

7 SECTION 3. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

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

10



Report Title:

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

Description:

Authorizes one county entity to oversee any public-private partnerships entered into by a county. Authorizes counties to develop public-private partnerships to construct relief sewers for affordable housing development projects. (SD1)

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