CHAPTER 46
GENERAL PROVISIONS

Part I. General Jurisdiction and Powers

Section

Note

Broadband services; exemption from certain permitting processes. L 2011, c 151; L 2013, c 264; L 2016, c 193, §§1, 2.

City and county of Honolulu to take ownership of specified road or parcel upon acceptance of funds. L 2016, c 194, §4.

Non-school hour programs for children and youth, annual report by state office of youth services. L 2006, c 281.

Public land trust information system. L 2011, c 54; L 2013, c 110.

Roads commission; private roads disputes; reports to 2018-2019 legislature (ceases to exist June 30, 2018). L 2016, c 194, §2.

Cross References

Access Hawaii committee (management of State's internet portal), see chapter 27G.

Acquisition of resource value lands, see chapter 173A.

Complete streets, see §264-20.5.

Conclusive presumptions relating to duty of public entities to warn of dangers at public beach parks, see §663-1.56.

Emergency management, see chapter 127A.

Employment of retirants, see §88-9.

Exception to liability for county lifeguard services, see §663-1.52.

Important agricultural lands, see §§205-41 to 52.

Information privacy and security council; personal information security, see §§487N-5 to 7.

Legacy land conservation commission, see §173A-2.4.

Neighborhood board, see §§92-81 to 83.

Parental preference in government contract and services, see §577-7.5.

Personal information policy and oversight responsibilities for government agencies, see §487J-5.

Small business regulatory flexibility act, see chapter 201M.

Uniform electronic transactions act, see chapter 489E.

Case Notes

Chapter did not preempt ordinance relating to residential condominium leasehold conversion. 76 H. 46, 868 P.2d 1193.

"PART I. GENERAL JURISDICTION AND POWERS

Cross References

Emergency preparedness, see §125C-32.

Jurisdiction over real property taxation, see state constitution, article VIII, §3 and chapter 246A.

§46-1 Meeting place of council. All meetings, regular or special, of the council may be held at such places within the county other than the county seat as the council shall designate. [L 1963, c 19, §1; Supp, §138-50; HRS §46-1]

Cross References

Emergency seat of government, see §§130-3, 130-4.

" **§46-1.5 General powers and limitation of the counties.** Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

(1) Each county shall have the power to frame and adopt a charter for its own self-government that shall establish the county executive, administrative, and legislative structure and organization, including but not limited to the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office;

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

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

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

(5) Each county shall have the power to:

(A) Maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters;

(B) Remove from the channels, and from the shores and beaches, any debris that is likely to create an unsanitary condition or become a public nuisance;

provided that, to the extent any of the foregoing 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;

(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); and

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

(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;

(7) Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by chapter 445 or other general law;

(8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for;

(9) Each county shall have the power to provide by ordinance assessments for the improvement or maintenance of districts within the county;

(10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose;

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

(12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal

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

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

(14) Each county shall have the power to:

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

(i) Local police matters;

(ii) Matters of sanitation;

(iii) Matters of inspection of buildings;

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

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

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

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

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

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

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

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

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

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

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

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

(A) Community promotion and public celebrations;

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

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

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

(19) Each county shall have the power to:

(A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for

distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings, and manage, regulate, and control the same;

(B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephone, and telecommunications service to the county;

(C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways, and for flushing the sewers; and

(D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways;

(20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance;

(21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military or civil disaster;

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

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

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

final written decision. These proceedings shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court;

(B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges, with the exception of fees or charges for water for residential use and sewer charges, collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the exception of water for residential use and sewer charges, collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the eligible taxes, fees, or charges and may require hearings or other proceedings. After addition of the unpaid civil fines to the taxes, fees, or charges, the unpaid civil fines shall not become a part of any taxes, fees, or charges. The county by ordinance may condition the issuance or renewal of a license, approval, or permit for which a fee or charge is assessed, except for water for residential use and sewer charges, on payment of the unpaid civil fines. Upon recordation of a notice of unpaid civil fines in the bureau of conveyances, the amount of the civil fines, including any increase in the amount of the fine which the county may assess, shall constitute a lien upon all real property or rights to real property belonging to any person liable for the unpaid civil fines. The lien in favor of the county shall be subordinate to any lien in favor of any person recorded or registered prior to the recordation of the notice of unpaid civil fines and senior to any lien recorded or registered after the recordation of the notice. The lien shall continue until the unpaid civil fines are paid in full or until a certificate of release or partial release of the lien, prepared by the county at the owner's expense, is recorded. The notice of unpaid civil fines shall state the amount of the fine as of the date of the notice and maximum permissible

daily increase of the fine. The county shall not be required to include a social security number, state general excise taxpayer identification number, or federal employer identification number on the notice. Recordation of the notice in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in land court under chapter 501. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing, and delinquent and may be collected in any lawful manner. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts;

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

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

(i) The nature and egregiousness of the violation;
(ii) The duration of the violation;
(iii) The number of recurring and other similar violations;
(iv) Any effort taken by the violator to correct the violation;
(v) The degree of involvement in causing or continuing the violation;
(vi) Reasons for any delay in the completion of the appeal; and
(vii) Other extenuating circumstances.

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

(E) After completion of a review of the amount of accrued civil fine by the county agency that imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil fine, shall immediately become due and collectible following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrual of civil fine prior to correcting the violation, shall immediately become due and collectible following reasonable notice to the violator, at the completion of all appeal proceedings;

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

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

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

(27) Each county shall have the power to enact and enforce ordinances regulating towing operations. [L 1988, c 263, §2; am L 1989, c 338, §1; am L 1990, c 135, §1; am L 1991, c 212, §2; am L 1993, c 168, §§1, 5; am L 1994, c 171, §§3, 4; am L 1995, c 236, §1; am L 1996, c 19, §§1, 2; am L 1997, c 350, §17; am L 1998, c 212, §3; am L 2001, c 194, §1; am L 2003, c 84, §2; am L 2005, c 163, §l; am L 2007, c 249, §6; am L 2010, c 89, §3; am L 2015, c 42, §2]

Cross References

Alternative dispute resolution board of advisors, see §613-3.

Construction projects; recycled glass requirements, see §103D-407.

Glass container recovery, see §§342G-81 to 87.

Graffiti:

Criminal property damage, see §§708-820 to 823.6.

Parental responsibility, see §577-3.5.

Graywater recycling program, see §342D-70.

Liability for promoting ridesharing, see §279G-2.

School construction, renovation; off-site improvement exemption, see §103-39.5.

Case Notes

Public utilities commission's regulatory powers over public utilities preempted power of counties to regulate height of utility poles. 72 H. 285, 814 P.2d 398.

Counties' general power of eminent domain as set out in paragraph (6) not limited by §§46-61, 46-62, and 101-2; when a municipal ordinance may be preempted pursuant to paragraph (13), discussed. 76 H. 46, 868 P.2d 1193.

Financial responsibility law was not preempted by chapter 294, part I (chapter 294 is predecessor to chapter 431, article 10C), where plaintiff's preemption theories were grounded in §70-105 (predecessor to §46-1.5(13)). 76 H. 209, 873 P.2d 88.

Where city ordinance did not require that funds generated by a "convicted persons" charge be used to defray the city's investigative and prosecutorial costs associated with the individual payor's case, leaving open the possibility that the charge could be used for general revenue raising purposes, ordinance was not a "service fee" under paragraph (8), but a tax, which the State did not empower the city to impose; thus ordinance was invalid. 89 H. 361, 973 P.2d 736.

Paragraph (16) does not prohibit the condominium lease-to-fee conversion mechanism prescribed by Revised Ordinances of Honolulu chapter 38 with respect to oceanfront property. 98 H. 233, 47 P.3d 348.

As the plain language of paragraph (24)(A) establishes that its notice requirements apply under circumstances in which a county seeks to impose civil fines, where defendant was charged with criminal offenses and was sentenced to criminal penalties relating to a dog owner who negligently fails to control a dangerous dog, this paragraph did not apply to defendant's case. 120 H. 486 (App.), 210 P.3d 9.

Pursuant to the statutory grant of authority under this section, the city had the power to enact and enforce Revised Ordinances of Honolulu §7-7.2, which makes it a crime for a dog owner to negligently fail to control a dangerous dog. 120 H. 486 (App.), 210 P.3d 9.

Where a Hawaii county ordinance made the enforcement of marijuana laws the lowest enforcement priority in the county, the ordinance conflicted with the Hawaii Penal Code and covered the same subject matter that the legislature intended to govern under chapter 329, and, therefore, was preempted. 132 H. 511 (App.), 323 P.3d 155 (2014).

" **§46-1.55 Indigenous Hawaiian architecture.** (a) Each county shall adopt ordinances allowing the exercise of indigenous native Hawaiian architectural practices, styles, customs, techniques, and materials historically employed by native Hawaiians, in the county's building code, including but not limited to residential and other structures comprised of either rock wall or wood frame walls covered by thatches of different native grasses or other natural material for roofs.

(b) The application of indigenous Hawaiian architecture shall be permitted in all zoning districts; provided it is consistent with the intent and purpose of the uniquely designated, special, or historic district.

(c) Each county shall adopt or amend its ordinances to implement this section no later than March 31, 2008. The ordinance adopted by Maui county shall serve as a model. [L 2006, c 310, §2; am L 2007, c 222, §7]

" **§46-1.6 REPEALED.** L 1996, c 13, §17.

" **[§46-1.7] Retention of emergency 911 recordings.** Each county public safety answering point shall retain recordings of all emergency 911 telephone calls and radio dispatches for a period of not less than one year. [L 2005, c 192, §1]

" **[§46-1.8] Reciprocal supplying of tax information.** Notwithstanding any other law to the contrary, a tax official of any county of the State may disclose any records relating to the administration of real property taxes to any duly accredited tax official of the State for tax purposes. [L Sp 2005, c 9, §2]

Revision Note

Section was enacted as an addition to chapter 246A but is renumbered to this chapter pursuant to §23G-15.

" **§46-2 Publication or advertising of ordinances, amendments, resolutions, and bills.** Notwithstanding any other provisions of law to the contrary, whenever any law requires the publication or advertisement of ordinances, amendments, resolutions, or bills, the publication or advertisement shall be in a newspaper of general circulation within the county concerned, and need not be in a daily newspaper. [L 1963, c 71, §1; Supp, §138-51; HRS §46-2]

Case Notes

Voluntary county decision to place advertising in papers other than plaintiff's during strike, not enjoinable. 272 F. Supp. 175.

" **[§46-2.1] Comprehensive ordinance codes.** All ordinances which have been duly enacted and not repealed by counties having a population in excess of 100,000 persons shall be compiled, consolidated, revised, indexed and arranged as a comprehensive ordinance code which shall be published within one year after June 5, 1970 and at least once every ten years thereafter. [L 1970, c 46, §1]

Revision Note

"June 5, 1970" substituted for "the passage of this Act".

" **§46-2.2 Publication of supplements.** Comprehensive ordinance codes published pursuant to section 46-2.1 shall be updated at least once a year by either of the following methods:

(1) By the publication of a cumulative pocket part supplement which shall be appropriately indexed and shall contain all ordinances enacted subsequent to the publication of the preceding comprehensive ordinance code; or

(2) By a supplement or supplements in looseleaf form, the pages of which are intended to replace existing pages or to be added thereto in appropriate positions within the comprehensive ordinance code. In the event the supplements are in looseleaf form, such supplements shall contain all ordinances enacted subsequent to the last preceding looseleaf supplement and shall also include appropriate amendment pages to the index contained in the comprehensive ordinance code. [L 1970, c 46, §2; am L 1990, c 60, §2]

" **§46-3 REPEALED.** L 1991, c 4, §2.

Cross References

For present provisions, see chapter 802.

" **§46-3.5 REPEALED.** L 2009, c 4, §4.

" **§46-4 County zoning.** (a) This section and any ordinance, rule, or regulation adopted in accordance with this section shall apply to lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power granted herein shall be exercised by ordinance which may relate to:

(1) The areas within which agriculture, forestry, industry, trade, and business may be conducted;
(2) The areas in which residential uses may be regulated or prohibited;
(3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or

dumping, erection of structures, and the location of buildings may be prohibited or restricted;

(4) The areas in which particular uses may be subjected to special restrictions;

(5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered;

(6) The location, height, bulk, number of stories, and size of buildings and other structures;

(7) The location of roads, schools, and recreation areas;

(8) Building setback lines and future street lines;

(9) The density and distribution of population;

(10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;

(11) Minimum and maximum lot sizes; and

(12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

Any civil fine or penalty provided by ordinance under this section may be imposed by the district court, or by the zoning agency after an opportunity for a hearing pursuant to chapter 91. The proceeding shall not be a prerequisite for any injunctive relief ordered by the circuit court.

Nothing in this section shall invalidate any zoning ordinance or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accordance with a long-range, comprehensive general plan to ensure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers of any county to achieve these ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) and (d).

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential,

agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

(b) Any final order of a zoning agency established under this section may be appealed to the circuit court of the circuit in which the land in question is found. The appeal shall be in accordance with the Hawaii rules of civil procedure.

(c) Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted.

(d) Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities with eight or fewer residents for purposes or functions that are licensed, certified, registered, or monitored by the State; provided that a resident manager or a resident supervisor and the resident manager's or resident supervisor's family shall not be included in this resident count. These group living facilities shall meet all applicable county requirements not inconsistent with the intent of this subsection, including but not limited to building height, setback, maximum lot coverage, parking, and floor area requirements.

(e) Neither this section nor any other law, county ordinance, or rule shall prohibit the use of land for employee housing and community buildings in plantation community subdivisions as defined in section 205-4.5(a)(12); in addition, no zoning ordinance shall provide for the elimination, amortization, or phasing out of plantation community subdivisions as a nonconforming use.

(f) Neither this section nor any other law, county ordinance, or rule shall prohibit the use of land for medical marijuana production centers or medical marijuana dispensaries established and licensed pursuant to chapter 329D; provided that the land is otherwise zoned for agriculture, manufacturing, or retail purposes. [L 1957, c 234, pt of §6 and §9; am L Sp 1959 2d, c 1, §§26, 38; am L 1965, c 140; Supp, §138-42; HRS §46-4; am L 1980, c 203, §1; am L 1981, c 229, §2; am L 1982, c 54, §5; am L 1985, c 272, §3; am L 1986, c 177, §1; am L 1987, c 109, §2, c 193, §1, and c 283, §4; am L 1988, c 141, §§5, 6 and c

252, §1; am L 1989, c 313, §1; am L 1990, c 67, §3; am L 1997, c 350, §15; am L 2004, c 212, §2; am L 2005, c 139, §3; am L 2006, c 237, §2; am L 2007, c 249, §7; am L 2011, c 220, §§9, 10; am L 2014, c 193, §7; am L 2015, c 241, §3]

Cross References

Zoning within land use districts, see §§205-5, 6.
See also county charters.

Rules of Court

Appeal to circuit court, see HRCP rule 72.

Attorney General Opinions

Counties have the power to prescribe lot sizes within an agricultural district established by the state land use commission. Att. Gen. Op. 62-33.

Preempts conflicting county fire and building codes. Att. Gen. Op. 84-7.

Immunity of state land from county planning and zoning laws extends to private nonprofit lessee undertaking park project in public interest. Att. Gen. Op. 86-3.

Law Journals and Reviews

Kaiser Hawaii Kai Development Company v. City and County of Honolulu: Zoning by Initiative in Hawaii. 12 UH L. Rev. 181.

Honolulu's Ohana Zoning Law: To Ohana or Not to Ohana. 13 UH L. Rev. 505.

The Lum Court, Land Use, and the Environment: A Survey of Hawai‘i Case Law 1983 to 1991. 14 UH L. Rev. 119.

The Manoa Valley Special District Ordinance: Community-Based Planning in the Post-Lucas Era. 19 UH L. Rev. 449.

Water Regulation, Land Use and the Environment. 30 UH L. Rev. 49.

Maui's Residential Workforce Housing Policy: Finding the Boundaries of Inclusionary Zoning. 30 UH L. Rev. 447.

Case Notes

Kauai county charter section 3.19 and ordinance no. 912 created a land use classification that did not previously exist and established the process developers must follow in order to use their land within that classification. Section 3.19 was an improper zoning initiative and, pursuant to Kaiser Hawaii Kai

and subsection (a), section 3.19 was invalid. 955 F. Supp. 2d 1156 (2013).

Where county officials assured developer that developer's plans met zoning requirements and developer expended substantial sum in reliance, the city was estopped from denying developer a building permit under a subsequently enacted ordinance. 60 H. 446, 592 P.2d 26.

Section does not relate to a city's executive, legislative and administrative structure and organization; zoning by initiative is impermissible. 70 H. 480, 777 P.2d 244.

Public utilities commission has the authority to regulate the height of utility poles. 72 H. 285, 814 P.2d 398.

As state water code expressly reserves the counties' authority with respect to land use planning and policy, water resource management commission allegedly imposing a "directive" on the counties to designate priorities among proposed uses did not usurp counties' land use planning and zoning authority. 94 H. 97, 9 P.3d 409.

Rezoning is a legislative function; a zoning ordinance is a legislative act and is subject to the deference given legislative acts. 102 H. 465, 78 P.3d 1.

Where department of planning and permitting director's mixed finding of fact and conclusion of law that a change in nonconforming use was permitted under the land use ordinance was not supported by the record, the appeals court erred when it concluded that the director's ruling "was reasonably based on the evidence before the director and constituted a reasonable application of the applicable zoning ordinance and the department's previous interpretation of that ordinance". 121 H. 16, 211 P.3d 74.

Grandfather protections afforded a property owner under this section and land use ordinance intended to prohibit new zoning ordinances from interfering with an owner's lawful uses of a building or premises under an existing zoning ordinance. 86 H. 343 (App.), 949 P.2d 183.

"Lawful use" and "previously lawful", as used in this section and land use ordinance, respectively, refer to compliance with previous zoning laws, not the building codes or other legal requirements that may be applicable to the construction or operation of a structure. 86 H. 343 (App.), 949 P.2d 183.

Subsection (a) establishes a private right of action in favor of a real estate owner directly affected by an alleged land use ordinance (LUO) zoning violation to seek judicial enforcement of the LUO; thus, the circuit court had original subject matter jurisdiction over plaintiffs' zoning enforcement claim; however, the circuit court's jurisdiction was subject to the doctrine of primary jurisdiction where the court was justified in requiring

the plaintiffs to first pursue an administrative determination of their claim that defendants had been violating the LUO before proceeding with judicial enforcement of the LUO. 127 H. 390 (App.), 279 P.3d 55 (2012).

Public trust duties under article XI, §1 of the Hawaii constitution extended to appellee Kauai County planning commission's review of appellant water bottling company's existing and proposed use of water for its operations; the county's public trust duty under article XI, §1 coupled with the State's power to create and delegate duties and responsibilities to the various counties through the enactment of statutes, established that the county had a duty to conserve and protect water in considering whether to issue a use permit and zoning permit to appellant. 130 H. 407 (App.), 312 P.3d 283 (2013).

" **§46-4.1 REPEALED.** L 1983, c 133, §2.

" **[§46-4.2] Nonsignificant zoning changes.** Each county may provide by ordinance that nonsignificant changes to zoning boundaries may be made administratively by the designated county agency with responsibility over zoning matters, provided that "nonsignificant changes" shall mean a zoning change which does not result in an increase or decrease in any zoning designation affecting more than five per cent or one acre of any parcel of property, whichever is less, and which is in compliance with the general plan and development plan designation for the property. [L 1977, c 74, §3]

" **[§46-4.5] Ordinances establishing historical, cultural, and scenic districts.** No ordinance to establish a historical, cultural, and scenic district around the environs of the Hawaii state capitol shall be valid unless the requirements and objectives in creating such a district and the criteria and procedure to determine whether a proposed improvement would in fact accomplish such objectives and requirements are first approved by the governor of the State; provided further that the State need not conform to any decision relating to any state property within such district if it determines that such decision is not in conformance to the criteria and procedures previously approved or that such decision cannot be accomplished because of funding limitations.

No requirement under any existing ordinance relating to the construction, alteration, repair, relocation or demolition of any structure within any historical, cultural, and scenic district of which the Hawaii state capitol is a part shall be effective as to any state property until the objectives and requirements and the criteria and procedures required by this

section have been approved by the governor of the State. [L 1973, c 215, §§1, 2]

" **§46-5 Planning and traffic commissions; creation.** The legislative body of any county with a population of less than 100,000 persons shall, without prejudice to the generality of the foregoing powers, and except as otherwise provided, have the following specific powers in addition to any other specific powers provided by law:

(1) County planning commission. To create a county planning commission (A) to formulate a master plan providing for the future growth, development, and beautification of the county in its public and private buildings, streets, roads, grounds, and vacant lots; (B) to formulate subdivision and zoning regulations; and (C) to recommend the establishment of building zones.

(2) County traffic commission. To create a county traffic commission to advise the legislative body in the regulation of traffic. [L 1963, c 58, §1; Supp, §138-62; HRS §46-5]

" **§46-6 Parks and playgrounds for subdivisions.** (a) Except as hereinafter provided, each county shall adopt ordinances to require a subdivider, as a condition to approval of a subdivision to provide land in perpetuity or to dedicate land for park and playground purposes, for the use of purchasers or occupants of lots or units in subdivisions. The ordinances may prescribe the instances when land shall be provided in perpetuity or dedicated, the area, location, grade, and other state of the sites so required to be provided or dedicated. In addition thereto, such ordinances may prescribe penalties or other remedies for violation of such ordinances.

(b) In lieu of providing land in perpetuity or dedicating land, the ordinances may permit a subdivider pursuant to terms and conditions set forth therein to:

(1) Pay to the county a sum of money deemed adequate by the county to purchase the park land the subdivider would otherwise have had to provide or dedicate; or

(2) Combine the payment of money with land to be provided or dedicated, the value of such combination to be as deemed adequate by the county to purchase the total amount of land the subdivider would otherwise have had to provide or dedicate.

The method of determining such full or partial payment shall be prescribed by the ordinances. The ordinances shall also provide that such money shall be used for the purpose of

providing parks and playgrounds for the use of purchasers or occupants of lots or units in the subdivision. Each county may establish by ordinance a time limit within which it must spend the park dedication fees it has collected.

(c) Pursuant to terms, conditions, and limitations specified by the ordinances, a subdivider shall receive credit:

(1) For privately-owned and maintained parks and playgrounds;

(2) For lands dedicated or provided for park and playground purposes prior to the effective date of the ordinances.

(d) Upon the provision of land in perpetuity or the dedication of land by the subdivider as may be required under this section, the county concerned shall thereafter assume the cost of improvements and their maintenance, and the subdivider shall accordingly be relieved from such costs.

(e) The ordinances adopted pursuant to this section may provide, where special circumstances, conditions, and needs within the respective counties so warrant, for such exemptions and exclusions as the councils of the respective counties may deem necessary or appropriate and may also prescribe the extent to and the circumstances under which the requirements therein shall or shall not be applicable to subdivisions.

(f) For purposes of this section certain terms used herein shall be defined as follows:

(1) "Approval" means the final approval granted to a proposed subdivision where the actual division of land into smaller parcels is sought, provided that where construction of a building or buildings is proposed without further subdividing an existing parcel of land, the term "approval" shall refer to the issuance of the building permit.

(2) "Dwelling unit" means a room or rooms connected together, constituting an independent housekeeping unit for a family and containing a single kitchen.

(3) "Lodging unit" means a room or rooms connected together, constituting an independent housekeeping unit for a family which does not contain any kitchen.

(4) "Parks and playgrounds" mean areas used for active or passive recreational pursuits.

(5) "Subdivider" means any person who divides land as specified under the definition of subdivision or who constructs a building or group of buildings containing or divided into three or more dwelling units or lodging units.

(6) "Subdivision" means the division of improved or unimproved land into two or more lots, parcels, sites,

or other divisions of land and for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to, or interest in, any or all such lots, parcels, sites, or division of land. The term includes resubdivision, and when appropriate to the context, shall relate to the land subdivided. The term also includes a building or group of buildings, other than a hotel, containing or divided into three or more dwelling units or lodging units.

(7) "Privately owned parks and playgrounds" mean parks or playgrounds and their facilities which are not provided in perpetuity or dedicated but which are owned and maintained by or on behalf of the ultimate users of the subdivision pursuant to recorded restrictive covenants. Where the privately owned park is a part of the lot or lots on which a building or group of buildings containing or divided into three or more dwelling units or lodging units is constructed, it shall not be required that the private park or playground meet county subdivision standards nor shall the area of the private park or playground be deducted from the area of the lot or lots for purposes of zoning or building requirements. [L 1967, c 294, §1; HRS §46-6; am L 1970, c 140, §1; am L 1977, c 208, §1; am L 1979, c 105, §5 and c 199, §1; gen ch 1985]

" **[§46-6.5] Public access.** (a) Each county shall adopt ordinances which shall require a subdivider or developer, as a condition precedent to final approval of a subdivision, in cases where public access is not already provided, to dedicate land for public access by right-of-way or easement for pedestrian travel from a public highway or public streets to the land below the high-water mark on any coastal shoreline, and to dedicate land for public access by right of way from a public highway to areas in the mountains where there are existing facilities for hiking, hunting, fruit-picking, ti-leaf sliding, and other recreational purposes, and where there are existing mountain trails.

(b) These ordinances shall be adopted within one year of May 22, 1973.

(c) Upon the dedication of land for a right-of-way, as required by this section and acceptance by the county, the county concerned shall thereafter assume the cost of improvements for and the maintenance of the right-of-way, and the subdivider shall accordingly be relieved from such costs.

(d) For the purposes of this section, "subdivision" means any land which is divided or is proposed to be divided for the

purpose of disposition into six or more lots, parcels, units, or interests and also includes any land whether contiguous or not, if six or more lots are offered as part of a common promotional plan of advertising and sale.

(e) The right-of-way shall be clearly designated on the final map of the subdivision or development.

(f) This section shall apply to the plan of any subdivision or development which has not been approved by the respective counties prior to July 1, 1973. [L 1973, c 143, §2]

Revision Note

"May 22, 1973" substituted for "the effective date of this Act".

Law Journals and Reviews

Beach Access: A Public Right? 23 HBJ 65.

"If a Policeman Must Know the Constitution, Then Why Not a Planner?" A Constitutional Challenge of the Hawai`i Public Access Statute. 23 UH L. Rev. 409.

" **§46-7 Agreements with federal government; use of funds.** The governing body or the planning commission or department of the various counties, with the consent of the council, may enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with the federal government or any other public body or bodies respecting action to be taken pursuant to any of the powers granted to it by law and furnish, expend, and receive any funds or other assistance in connection with projects being or to be undertaken pursuant to the powers. [L 1957, c 139, §1; Supp, §138-11.5; HRS §46-7]

" **§46-8 State and county co-sponsorship of programs.** The governor may enter into agreements with the council of any county providing for the co-sponsorship and joint development and maintenance of programs and projects, within and for the county, which have been authorized by the legislature or for which moneys have been appropriated by the legislature. [L 1965, c 158, §1; Supp, §138-63; HRS §46-8]

" **§46-9 Expenditures of money for sister-city relationships.** Any other law to the contrary notwithstanding, any county, including the city and county of Honolulu, may make expenditures of public funds, whenever the funds are available, in order to further the ties of friendship, understanding, and goodwill

existing under sister-city relationships entered into by resolution duly adopted by the respective legislative bodies of each county, including the city and county of Honolulu. [L 1963, c 86, §1; Supp, §138-52; HRS §46-9]

" **§46-10 County bands; travel.** The county council or city council of any county having a county band may authorize its band to travel to any other county or abroad for the purpose of creating goodwill. Notwithstanding any law to the contrary, county bands are authorized to receive donations from private persons or entities for travel expenses, or to have said expenses underwritten by private persons or entities, or the band itself may raise funds by engaging in fund-raising activities, provided that such fund-raising activities shall be done after regular working hours, and provided further that admission fees may be charged wherever or whenever the band is performing. [L 1959, c 188, §1; Supp, §138-41; HRS §46-10; am L 1971, c 167, §1]

" **§46-11 Federal flood insurance.** The Hawaii tourism authority in regard to the convention center district and the mayor or executive officer and the council of the various counties, in regard to the respective counties, may participate and apply on behalf of their respective district and counties for flood insurance coverage pursuant to any applicable provisions of Public Law 1016, Eighty-fourth Congress, Second Session, (70 Stat. 1078). The Hawaii tourism authority, in regard to the convention center district, and the mayor or executive officer and the council of the various counties, in regard to the respective counties, shall be vested with the functions, powers, and duties which are necessary to enable their respective district and counties to qualify, participate, and apply for the flood insurance coverage. [L 1957, c 178, §3; Supp, §138-43; HRS §46-11; am L Sp 1993, c 7, §3; am L 2003, c 3, §1]

" **[§46-11.5] Maintenance of channels, streambeds, streambanks, and drainageways.** Notwithstanding any law to the contrary, each county shall provide for the maintenance of channels, streambeds, streambanks, and drainageways, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters; and for the removal from the channels, streambeds, streambanks, and drainageways and from the shores and beaches any debris which is likely to create an unsanitary condition or otherwise become a public nuisance; provided that to the extent any of the foregoing work is a private responsibility the responsibility

may be enforced by the county in lieu of the work being done at county expense, and any private entity or person refusing to comply with any final order issued by the county shall be in violation of this chapter and be liable for a civil penalty not to exceed $500 for each day the violation continues; provided further that it shall be the responsibility of the county to maintain all channels, streambeds, streambanks, and drainageways unless such channels, streambeds, streambanks, and drainageways are privately owned or owned by the State, in which event such channels, streambeds, streambanks, and drainageways shall be maintained by their respective owners. [L 1986, c 121, §2]

" **§46-12 Cleaning shores and beaches of seaweed, limu, and debris.** The various counties shall be responsible for removing and clearing all seaweed, limu, and debris which are likely to create an unsanitary condition or to otherwise become a public nuisance from the shores and beaches situated within the respective counties; provided that to the extent any of the foregoing work is a private responsibility, the responsibility may be enforced by the county in lieu of the work being done at public expense. [L 1965, c 191, §1; Supp, §138-55; HRS §46-12]

Case Notes

County has sole responsibility for shores and beaches likely to be used with some frequency by members of the public. 66 H. 55, 656 P.2d 1336.

" **[§46-12.5] State beach park lifeguard services.** Each county may provide lifeguard services for any state beach park where the number of swimmers using the beach may warrant a lifeguard, or where water hazards at the beach present a threat to public safety; provided that the county and the department of land and natural resources shall first mutually agree that those services are necessary for the particular beach. [L 1990, c 182, §1]

Cross References

Conclusive presumptions relating to duty of public entities to warn of dangers at public beach parks, see §663-1.56.

Exception to liability for county lifeguard services see §663-1.52.

" **§46-13 Each county to determine its own number of fire stations.** Any other provisions of law to the contrary notwithstanding, the council of each county, may determine the

number of fire stations it will establish and maintain within its respective county. [L 1962, c 2, §2; Supp, §138-46; HRS §46-13]

" **[§46-13.1] Volunteer fire stations.** The council of the several counties may establish and maintain one or more volunteer fire stations in any area or areas of the county as it may determine to be necessary to provide adequate fire protection. All necessary facilities and equipment for the volunteer fire stations may be furnished by the county. The officers, firefighters or other personnel necessary for the operation or maintenance of these stations shall be selected and appointed by the fire chief partially or entirely on a voluntary noncompensatory basis and except as otherwise provided in this section. All volunteer personnel for any volunteer fire station shall serve at the pleasure of the fire chief.

The fire chief of the county shall have full authority and control over all volunteer fire stations, their equipment, apparatus, officers, firefighters, and personnel, and the fire chief may designate a suitable person to be in charge of any volunteer fire station. Suitable instructors may be assigned from time to time by the fire chief to such fire stations for the training of volunteer firefighters and personnel.

In case any person serving in the capacity of volunteer personnel for the fire station, including a volunteer officer or firefighter, sustains any injury or dies as a result of any accident arising out of and in the course of training, or the performance of duty for such fire station, the person shall be entitled to the benefits provided for volunteer personnel in part V of chapter 386, and be considered to be an employee of the county for the purpose of obtaining compensation benefits under chapter 386. Compensation benefits shall be determined upon the basis of average weekly wages computed as set forth in section 386-51, and upon the basis of earnings from the usual employment of the person, or upon the basis of earnings at the rate of $18 per week, whichever is most favorable to the claimant or claimants. The director of labor and industrial relations shall administer the provisions hereof in accordance with section 386-172.

Any provision to the contrary notwithstanding, volunteer personnel, including officers and firefighters, shall be entitled to subsistence in amounts deemed proper by the council of the respective counties. [L 1973, c 162, §1; am L 1983, c 124, §15; gen ch 1985]

Attorney General Opinions

Section establishes a comprehensive statutory scheme for counties to rely upon to secure firefighting services from volunteers who are not civil servants; its literal provisions can be given effect only if terms "other law" or "state statute" used in §§76-16(17) and 76-77(10) are construed liberally. Att. Gen. Op. 97-6.

" **§46-14 REPEALED.** L 1978, c 153, §1.

Cross References

For provisions dealing with emergency medical services, see chapter 321, part XVIII.

Rapid identification documents, see §321-23.6.

" **§46-14.5 Land use density and infrastructure; low-income rental units.** Notwithstanding any other law to the contrary, the counties are authorized to provide flexibility in land use density provisions and public facility requirements to encourage the development of any rental housing project where at least a portion of the rental units are set aside for persons and families with incomes at or below one hundred forty per cent of the area median family income, of which twenty per cent are set aside for persons and families with incomes at or below eighty per cent of the area median family income. [L 2005, c 196, §3; am L 2006, c 217, §2]

" **§46-15 Experimental and demonstration housing projects.** (a) The mayor of each county, after holding a public hearing on the matter and receiving the approval of the respective council, shall be empowered to designate areas of land for experimental and demonstration housing projects, the purposes of which are to research and develop ideas that would reduce the cost of housing in the State. Except as hereinafter provided, the experimental and demonstration housing projects shall be exempt from all statutes, ordinances, charter provisions, and rules or regulations of any governmental agency or public utility relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction and sale of homes thereon; provided that the experimental and demonstration housing projects shall not affect the safety standards or tariffs approved by the public utility commissions for such public utility.

The mayor of each county with the approval of the respective council may designate a county agency or official who shall have the power to review all plans and specifications for the subdivisions, development and improvement of the land

involved, and the construction and sale of homes thereon. The county agency or official shall have the power to approve or disapprove or to make modifications to all or any portion of the plans and specifications.

The county agency or official shall submit preliminary plans and specifications to the legislative body of the respective county for its approval or disapproval. The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the approved preliminary plans and specifications. The final plans and specifications shall constitute the standards for the particular project.

No action shall be prosecuted or maintained against any county, its officials or employees, on account of actions taken in reviewing, approving, or disapproving such plans and specifications.

Any experimental or demonstration housing project for the purposes hereinabove mentioned may be sponsored by any state or county agency or any person as defined in section 1-19.

The county agency or official shall apply to the state land use commission for an appropriate land use district classification change, except where a proposed project is located on land within an urban district established by the state land use commission. Notwithstanding any law, rule, or regulation to the contrary, the state land use commission may approve the application at any time after a public hearing held in the county where the land is located upon notice of the time and place of the hearing being published in the same manner as the notice required for a public hearing by the planning commission of the appropriate county.

(b) The experimental and demonstration homes may be sold to the public under terms and conditions approved by the county agency or official who has been designated to review the plans and specifications.

(c) The county agency or official may adopt and promulgate rules and regulations which are necessary or desirable to carry out the purposes of this section. [L 1970, c 108, §1; am L 1975, c 142, §1; am L 1977, c 207, §1; am L 1984, c 66, §1]

" **[§46-15.01] Limitation of application.** This chapter shall not be construed to exempt counties from the application of chapter 104 to experimental and demonstration housing projects pursuant to section 46-15. [L 1992, c 281, §1]

Attorney General Opinions

Chapter 104 applied to the county of Hawaii's Waikoloa employee housing project pursuant to this section and the plain language of §104-2. Att. Gen. Op. 06-1.

" **§46-15.1 Housing; county powers.** *[Repeal and reenactment on July 1, 2019. L 2015, c 102, §§3, 4; L 2016, c 55, §50.]* (a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the Hawaii housing finance and development corporation pursuant to chapter 201H insofar as those powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low- and moderate-income housing; provided that no county shall be empowered to cause the State to issue general obligation bonds to finance a project pursuant to this section; provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the Hawaii housing finance and development corporation pursuant to section 201H-36; and provided further that section 201H-16 shall not apply to this section unless federal guidelines specifically provide local governments with that authorization and the authorization does not conflict with any state laws. The powers shall include the power, subject to applicable limitations, to:

(1) Develop and construct dwelling units, alone or in partnership with developers;
(2) Acquire necessary land by lease, purchase, exchange, or eminent domain;
(3) Provide assistance and aid to a public agency or other person in developing and constructing new housing and rehabilitating existing housing for elders of low- and moderate-income, other persons of low- and moderate-income, and persons displaced by any governmental action, by making long-term mortgage or interim construction loans available;
(4) Contract with any eligible bidders to provide for construction of urgently needed housing for persons of low- and moderate-income;
(5) Guarantee the top twenty-five per cent of the principal balance of real property mortgage loans, plus interest thereon, made to qualified borrowers by qualified lenders;
(6) Enter into mortgage guarantee agreements with appropriate officials of any agency or instrumentality of the United States to induce those officials to commit to insure or to insure mortgages under the National Housing Act, as amended;

(7) Make a direct loan to any qualified buyer for the downpayment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of residential property;

(8) Provide funds for a share, not to exceed fifty per cent, of the principal amount of a loan made to a qualified borrower by a private lender who is unable otherwise to lend the borrower sufficient funds at reasonable rates in the purchase of residential property; and

(9) Sell or lease completed dwelling units.

For purposes of this section, a limitation is applicable to the extent that it may reasonably be construed to apply to a county.

(b) Each county shall recognize housing units developed by the department of Hawaiian home lands and issue affordable housing credits to the department of Hawaiian home lands. The credits shall be transferable and shall be issued on a one-credit for one-unit basis, unless the housing unit is eligible for additional credits as provided by adopted county ordinances, rules, or any memoranda of agreement between a county and the department of Hawaiian home lands. In the event that credits are transferred by the department of Hawaiian home lands, twenty-five per cent of any monetary proceeds from the transfer shall be used by the department of Hawaiian home lands to develop units for rental properties. Credits shall be issued for each single-family residence, multi-family unit, other residential unit, whether for purposes of sale or rental, or if allowed under the county's affordable housing programs, vacant lot, developed by the department of Hawaiian home lands. The credits may be applied county-wide within the same county in which the credits were earned to satisfy affordable housing obligations imposed by the county on market-priced residential and non-residential developments. County-wide or project-specific requirements for housing class, use, or type; or construction time for affordable housing units shall not impair, restrict, or condition the county's obligation to apply the credits in full satisfaction of all county requirements, whether by rule, ordinance, or particular zoning conditions of a project. Notwithstanding any provisions herein to the contrary, the department may enter into a memorandum of agreement with the county of Kauai to establish, modify, or clarify the conditions for the issuance, transfer, and redemption of the affordable housing credits in accordance with county affordable housing ordinances or rules. Notwithstanding any provisions herein to the contrary, the department may enter into a memorandum of

agreement with the city and county of Honolulu to establish, modify, or clarify the conditions for the issuance, transfer, and redemption of the affordable housing credits in accordance with county affordable housing ordinances or rules. At least half of the affordable housing credits issued by the city and county of Honolulu shall be subject to a memorandum of agreement pursuant to this subsection.

For purposes of this section, "affordable housing obligation" means the requirement imposed by a county, regardless of the date of its imposition, to develop vacant lots, single-family residences, multi-family residences, or any other type of residence for sale or rent to individuals within a specified income range.

(c) Any law to the contrary notwithstanding, any county may:

(1) Authorize and issue bonds under chapter 47 and chapter 49 to provide moneys to carry out the purposes of this section or section 46-15.2, including the satisfaction of any guarantees made by the county pursuant to this section;

(2) Appropriate moneys of the county to carry out the purposes of this section;

(3) Obtain insurance and guarantees from the State or the United States, or grants from either;

(4) Designate, after holding a public hearing on the matter and with the approval of the respective council, any lands owned by it for the purposes of this section;

(5) Provide interim construction loans to partnerships of which it is a partner and to developers whose projects qualify for federally assisted project mortgage insurance, or other similar programs of federal assistance for persons of low and moderate income; and

(6) Adopt rules pursuant to chapter 91 as are necessary to carry out the purposes of this section.

(d) The provisions of this section shall be construed liberally so as to effectuate the purpose of this section in facilitating the development, construction, and provision of low- and moderate-income housing by the various counties.

(e) For purposes of this section, "low and moderate income housing" means any housing project that meets the definition of "low- and moderate-income housing project" in section 39A-281.

[L 1974, c 179, §2; am L 1977, c 207, §2; am L 1980, c 190, §1; am L 1981, c 39, §1; am L 1982, c 118, §1; am L 1987, c 80, §1 and c 337, §4; am L 1989, c 69, §2; am L 1990, c 67, §8; am L 1997, c 350, §6; am L 2005, c 196, §26(b); am L 2006, c 180, §16; am L 2007, c 37, §1 and c 249, §8; am L 2009, c 141, §§1,

3; am L 2012, c 98, §§1, 3; am L 2014, c 96, §11; am L 2015, c 102, §1]

Note

L 1997, c 350, §§14 and 15 purport to amend this section.

The L 2014, c 96 amendment is exempt from the repeal and reenactment condition of L 2009, c 141, §3. L 2014, c 96, §23.

Cross References

Concurrent processing, see §46-15.7.

Facilitated application process, see §201-62.

Law Journals and Reviews

The Scramble to Protect the American Dream in Paradise: Is Affordable Housing Possible in Hawaii? 10 HBJ No. 13, at pg. 37.

" **§46-15.2 Housing; additional county powers.** In addition and supplemental to the powers granted to counties by section 46-15.1, a county shall have and may exercise any of the following powers:

(1) To provide assistance and aid to persons of low- and moderate-income in acquiring housing by:
   (A) Providing loans secured by a mortgage;
   (B) Acquiring the loans from private lenders where the county has made advance commitment to acquire the loans; and
   (C) Making and executing contracts with private lenders or a public agency for the origination and servicing of the loans and paying the reasonable value of the services;

(2) In connection with the exercise of any powers granted under this section or section 46-15.1, to establish one or more loan programs and to issue bonds under chapter 47 or 49 to provide moneys to carry out the purposes of this section or section 46-15.1; provided that:
   (A) If bonds are issued pursuant to chapter 47 to finance one or more loan programs, the county may establish qualifications for the program or programs as it deems appropriate;
   (B) If bonds are issued pursuant to chapter 49 to finance one or more loan programs, the loan program or programs shall comply with part III,

subpart B of chapter 201H, to the extent applicable;

(C) If bonds are issued pursuant to section 47-4 or chapter 49, any loan program established pursuant to this section or any county-owned dwelling units constructed under section 46-15.1 shall be and constitute an "undertaking" under section 49-1 and chapter 49 shall apply to the loan program or county-owned dwelling units to the extent applicable;

(D) In connection with the establishment of any loan program pursuant to this section, a county may employ financial consultants, attorneys, real estate counselors, appraisers, and other consultants as may be required in the judgment of the county and fix and pay their compensation from funds available to the county therefor;

(E) Notwithstanding any limitation otherwise established by law, with respect to the rate of interest on any loan made under any loan program established pursuant to this section, the loan may bear a rate or rates of interest per year as the county shall determine; provided that no loan made from the proceeds of any bonds of the county shall be under terms or conditions that would cause the interest on the bonds to be deemed subject to income taxation by the United States;

(F) Notwithstanding any limitation otherwise established by law, with respect to the amount of compensation permitted to be paid for the servicing of loans made under any loan program established pursuant to this section, a county may fix any reasonable compensation as the county may determine;

(G) Notwithstanding the requirement of any other law, a county may establish separate funds and accounts with respect to bonds issued pursuant to chapter 47 or 49 to provide moneys to carry out the purposes of this section or section 46-15.1 as the county may deem appropriate;

(H) Notwithstanding any provision of chapter 47 or 49 or of any other law, but subject to the limitations of the state constitution, bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 may be sold at public or private sale at a price; may bear interest at a rate or rates per year; may be

payable at a time or times; may mature at a time or times; may be made redeemable before maturity at the option of the county, the holder, or both, at a price or prices and upon terms and conditions; and may be issued in coupon or registered form, or both, as the county may determine;

(I) If deemed necessary or advisable, the county may designate a national or state bank or trust company within or without the State to serve as trustee for the holders of bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1, and enter into a trust indenture, trust agreement, or indenture of mortgage with the trustee whereby the trustee may be authorized to receive and receipt for, hold, and administer the proceeds of the bonds and to apply the proceeds to the purposes for which the bonds are issued, or to receive and receipt for, hold, and administer the revenues and other receipts derived by the county from the application of the proceeds of the bonds and to apply the revenues and receipts to the payment of the principal of, or interest on the bonds, or both. Any trust indenture, trust agreement, or indenture of mortgage entered into with the trustee may contain any covenants and provisions as may be deemed necessary, convenient, or desirable by the county to secure the bonds. The county may pledge and assign to the trustee any agreements related to the application of the proceeds of the bonds and the rights of the county thereunder, including the rights to revenues and receipts derived thereunder. Upon appointment of the trustee, the director of finance of the county may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption, of the bonds; or may elect to limit the functions the director of finance performs as a fiscal agent; and may appoint a trustee to serve as the fiscal agent; and may authorize and empower the trustee to perform the functions with respect to payment, purchase, registration, transfer, exchange, and redemption, as the director of finance deems necessary, advisable, or expedient, including

without limitation the holding of the bonds and coupons that have been paid and the supervision and conduction or the destruction thereof in accordance with law;

(J) If a trustee is not appointed to collect, hold, and administer the proceeds of bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1, or the revenues and receipts derived by the county from the application of the proceeds of the bonds, as provided in subparagraph (I), the director of finance of the county may hold the proceeds or revenues and receipts in a separate account in the treasury of the county, to be applied solely to the carrying out of the ordinance, trust indenture, trust agreement, or indenture of mortgage, if any, authorizing or securing the bonds; and

(K) Any law to the contrary notwithstanding, the investment of funds held in reserves and sinking funds related to bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 shall comply with section 201H-77; provided that any investment that requires approval by the county council pursuant to section 46-48 or 46-50 shall first be approved by the county council;

(3) To acquire policies of insurance and enter into banking arrangements as the county may deem necessary to better secure bonds issued to provide money to carry out the purposes of this section or section 46-15.1, including without limitation contracting for a support facility or facilities as may be necessary with respect to bonds issued with a right of the holders to put the bonds and contracting for interest rate swaps; and

(4) To do any and all other things necessary or appropriate to carry out the purposes and exercise the powers granted in section 46-15.1 and this section. [L 1982, c 284, §1; am L 1983, c 156, §1; am L 1987, c 80, §2; am L 1990, c 34, §4; am L 1997, c 350, §7; am L 2007, c 37, §2 and c 249, §9]

Note

L 1997, c 350, §15 purports to amend this section.

" **§46-15.25 Infrastructure dedication; affordable housing.** (a) Infrastructure for affordable housing shall be deemed dedicated to the county if the county does not accept or reject the request for dedication of infrastructure within sixty days of the receipt by the appropriate county council of a completed application for dedication request; provided that:

(1) Applicable meter and connection fees and utility costs relating to the dedicated infrastructure have been paid;

(2) The dedicated infrastructure conforms to applicable county standards in effect at the time of construction; and

(3) The completion of the improvements comprising a dedicated infrastructure is granted approval by the county.

(b) For the purposes of this section:

"Affordable housing" means housing that is affordable to households with incomes at or below one hundred forty per cent of the median family income as determined by the United States Department of Housing and Urban Development.

"Infrastructure" includes water, drainage, sewer, waste disposal and waste treatment systems, road, and street lighting that connect to the infrastructure of the county. [L 2009, c 142, §2; am L 2010, c 26, §2]

" **§46-15.3 Regulation of adult family boarding home and care home.** (a) For the purpose of regulation under a county's life safety code, building code, fire code, or any other ordinance of similar purpose, a licensed adult family boarding home or licensed care home that provides living accommodations for:

(1) The operator of the home and operator's family; and

(2) Up to six other persons, not more than three of whom are incapable of self-preservation because of age or physical or mental limitations,

shall be deemed a single-family dwelling occupied by a family.

(b) For the purpose of this section:

"Building code" means an ordinance the purpose of which is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location, and maintenance of all buildings and structures within the county's jurisdiction and certain equipment specifically regulated by the ordinance.

"Fire code" means an ordinance adopted under section 132-3 or an ordinance intended to prescribe regulations consistent with recognized good practice for the safeguarding to a reasonable degree of life and property from the hazards of fire

and explosion arising from the storage, handling, and use of hazardous substances, materials, and devices and from conditions hazardous to life or property in the use or occupancy of buildings or premises.

"Licensed adult family boarding home" means an adult family boarding home licensed under chapter 346, part IV.

"Licensed care home" means a care home licensed under section 321-15.6.

"Life safety code" means an ordinance the purpose of which is to establish minimum requirements that will provide a reasonable degree of safety from fire in buildings and structures. [L 1985, c 302, §1; am L 2006, c 270, §1]

" **§46-15.35 Family child care homes; permitted use in residential areas and agriculturally designated districts.** (a) For the purposes of zoning, family child care homes shall be:

(1) Considered a residential use of property and shall be a permitted use in all residentially designated zones, including but not limited to zones for single-family dwellings; and

(2) Considered a permitted use in all agriculturally designated districts; provided that the family child care home is located in a farm dwelling, notwithstanding sections 205-2 and 205-4.5.

No conditional use permit, variance, or special exception shall be required for residences used as family child care homes.

(b) For the purposes of this section, "family child care home" means a private residence, including an apartment, unit, or townhouse, as those terms are defined in section 502C-1, at which care may be provided for one to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption at any given time. [L 1996, c 303, §2; am L 1999, c 242, §§3, 8(2); am L 2001, c 225, §3; am L 2005, c 20, §1; am L 2014, c 210, §1]

" **[§46-15.36] Hospice homes; permitted use in residential areas.** For purposes of section 46-4, a hospice home shall be considered a residential use of property and shall be a permitted use in residentially designated zones including but not limited to zones for single-family dwellings. No conditional use, permit, variance, or special exception shall be required for a residence used as a hospice home.

For purposes of this section, "hospice home" means any facility operated by a licensed hospice service agency providing twenty-four-hour living accommodations to no more than five unrelated persons who are admitted to the hospice program of care. [L 1999, c 77, §2]

" **§46-15.39 REPEALED.** L 2005, c 139, §4.

" **§46-15.4 Administrative inspections and warrants.** (a) The respective counties may conduct inspections to enforce sections 445-94 to 445-96. Each county may conduct its inspections without a warrant if the conditions enumerated in subsection (c) exist. A county shall conduct its inspection with a warrant in accordance with this section if the circumstances enumerated in subsection (c) do not exist or if specific buildings or premises to be inspected can be identified through citizen complaint or by information obtained from state agencies under section 46-15.5. The issuance and execution of an administrative inspection warrant shall be as follows:

(1) A judge of the circuit court, or any district judge within the judge's jurisdiction, may issue warrants for the purpose of conducting administrative inspections. The warrants shall be issued upon proper oath or affirmation showing probable cause that:
    (A) The conditions of operation under section 445-95 have been violated; or
    (B) A person is operating a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, without the certificates required under section 445-94;

(2) A warrant shall be issued only upon an affidavit of an individual having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that there is probable cause to believe the grounds for issuing a warrant exist, the judge shall issue a warrant identifying the area, premises, building, or records to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
    (A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
    (B) Be directed to a person authorized by the county to execute it;
    (C) Command the person to whom it is directed to inspect the area, premises, building, or records identified for the purpose specified and, if appropriate, use reasonable force in conducting the inspection authorized by the warrant and direct the seizure of the property specified;

(D) Identify the item or types of property to be seized, if any; and

(E) Direct that it be served during the daylight business hours between 8:00 a.m. and 5:00 p.m. and designate the judge to whom it shall be returned;

(3) A warrant issued pursuant to this section shall be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant; and

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the issuing court.

(b) The designated representative of the county may make administrative inspections of premises in accordance with the following:

(1) When authorized by an administrative inspection warrant issued pursuant to subsection (a) the representative, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge of the premises may enter the premises for the purpose of conducting an administrative inspection; and

(2) When authorized by an administrative inspection warrant, the representative may inspect and copy records identifying the tenants, lodgers, or boarders of the lodging or tenement house, group home, group residence, group living arrangement, or boardinghouse.

(c) This section does not prevent entries or the inspection without a warrant of property, books, and records pursuant to an administrative subpoena issued in accordance with law:

(1) If the owner, operator, or agent in charge of the provider premises consents;
(2) In situations presenting imminent danger to health or safety of the occupants or customers of any lodging or tenement house, hotel, boardinghouse, or restaurant, or that of the surrounding community; or
(3) In all other situations in which a warrant is not constitutionally required. [L 1987, c 333, pt of §1; am L 1988, c 141, §7; am L 2001, c 35, §2]

" **§46-15.5 Cooperation by state departments.** All state departments, including the departments of human services and health, shall cooperate with the counties with respect to administrative inspections conducted under section 46-15.4, by providing information:
(1) Regarding probable violations of the conditions of a license under section 445-95;
(2) Regarding the probable operation of a lodging or tenement house, group home, group residence, group living arrangement, hotel, boardinghouse, or restaurant; or
(3) That may be used to satisfy the probable cause requirement of section 46-15.4. [L 1987, c 333, pt of §1; am L 1989, c 261, §3]

" **§46-15.6 Definitions.** When used in this chapter, unless the context requires otherwise:
"Premises" shall include but not be limited to a lodging or tenement house, group residence, group living arrangement, hotel, boardinghouse, or restaurant as further defined in section 445-90, or any other like facility serving unsupervised or unrelated individuals.
"Public nuisances" shall include but not be limited to the placement of structures, stalls, stands, furniture, and containers on streets, sidewalks, and public places where the placement of structures, stalls, stands, furniture, and containers are inconsistent with or frustrate the purpose, function, or activity for which the street, sidewalk, or public place was intended. [L 1987, c 333, pt of §1; am L 1994, c 171, §2]

" **[§46-15.7] Concurrent processing.** When amendments to a county community or development plan, a county zoning map, or any combination of the two, are necessary to permit the development of a housing project, requests for amendments to these plans and zoning maps shall be allowed, if accepted for processing by the county, to be processed concurrently at the

request of the applicant. In addition, upon the request of the applicant, these plan and zoning map amendment requests may be processed concurrently with any request to the state land use commission for the redesignation of lands which would permit the development of the housing project.

For the purposes of this section:

"County community or development plan" means a relatively detailed plan for an area or region within a county to implement the objectives and policies of a county general plan.

"Housing project" means a plan, design, or undertaking for the development of single- or multi-family housing, including any affordable housing component which may be required by the county council. A housing project may also include ancillary uses such as commercial and industrial uses which are an integral part of the development. [L 1994, c 262, §1]

Cross References

Facilitated application process, see §201-62.

Law Journals and Reviews

The Scramble to Protect the American Dream in Paradise: Is Affordable Housing Possible in Hawaii? 10 HBJ No. 13, at pg. 37.

" **§46-15.9 Traffic regulation; repair and maintenance; public right to use public streets, roads, or highways whose ownership is in dispute.** (a) Any provision of law to the contrary notwithstanding, any county and its authorized personnel may impose and enforce traffic laws and shall enforce chapters 249; 286; 287; 291; 291C; 291E; 431, articles 10C and 10G; and 486, part III on public streets, roads, or highways whose ownership is in dispute between the State and the county.

(b) Any provision of the law to the contrary notwithstanding, any county and its authorized personnel may repair or maintain, in whole or in part, public streets, roads, or highways whose ownership is in dispute between the State and the county.

(c) No presumption that a county owns a particular street, road, or highway shall arise as a result of the county's performance of the activities allowed by subsection (a) or (b).

(d) The general public shall have the unrestricted right to use public streets, roads, or highways whose ownership is in dispute between the State and the county to access the shoreline and other public recreational areas; provided that this

subsection shall not apply to any private street, road, or highway whose ownership is in dispute.

(e) As used in this section:

"Public recreational area" means coastal and inland recreational areas, including beaches, shores, public parks, public lands, public trails, and bodies of water opened to the public for recreational use. [L 2008, c 56, §2; am L 2010, c 153, §1]

" **§46-16 Traffic regulation and control over private streets.** Any provision of law to the contrary notwithstanding, any county and its authorized personnel may impose and enforce traffic regulations and place appropriate traffic control devices, and may enforce chapters 249; 286; 287; 291; 291C; 291E; 431, articles 10C and 10G; and 486, part III on the following categories of private streets, highways, or thoroughfares, except private roads used primarily for agricultural and ranching purposes:

(1) Any private street, highway, or thoroughfare which has been used continuously by the general public for a period of not less than six months; provided that the county shall not be responsible for the maintenance and repair of the private street, highway, or thoroughfare when it imposes or enforces traffic regulations and highway safety laws or places or permits to be placed appropriate traffic control devices on that street, highway, or thoroughfare; provided further that no adverse or prescriptive rights shall accrue to the general public when the county imposes or enforces traffic regulations and highway safety laws or places appropriate traffic control devices on that street, highway, or thoroughfare; nor shall county consent to the placement of traffic control signs or markings on a private street be deemed to constitute control over that street; and

(2) Any private street, highway, or thoroughfare which is intended for dedication to the public use as provided in section 264-1 and is open for public travel but has not yet been accepted by the county. [L 1973, c 137, §1; am L 1988, c 358, §1; am L 1995, c 173, §2; am L 2010, c 153, §2]

Case Notes

While the fact that the privately owned road was platted on a subdivision map, that §265A-1 authorized counties to repair and

maintain private streets, and this section authorized counties to regulate traffic on private streets, and each of these factors was significant in determining which party or parties had control of the private roadway, appellate court erred in concluding as a matter of law that defendant property owners did not control roadway and thus had no duty to maintain, repair, or warn of a dangerous condition; the issue of control of the roadway was a question of fact for the jury. 103 H. 385, 83 P.3d 100.

" **[§46-16.2] Commuter benefits program.** (a) The counties may adopt an ordinance establishing a commuter benefits program that consists of one or more of the following commuter benefits options:

(1) A program, consistent with section 132(f) of the Internal Revenue Code of 1986, as amended, allowing covered employees to elect to exclude from taxable wages costs incurred for transit passes, vanpool charges, and bicycle commuting costs up to the maximum amount allowed by federal tax law;

(2) A program whereby the employer offers employees a subsidy to offset the monthly cost of commuting via transit, vanpool, or bicycle. The subsidy shall be equal to the lesser of the monthly cost of a transit pass or the monthly cost of a vanpool; provided that a subsidy for bicycle costs shall be in addition to subsidies for transit and vanpool costs; or

(3) Transportation furnished by the employer at no cost or low cost, as determined by the designated authority, to employees in a vanpool, bus, or similar multi-passenger vehicle operated by or for the employer.

(b) Nothing in this section shall prevent an employer from offering a more generous commuter benefit that is otherwise consistent with the requirements of the applicable commuter benefits ordinance. Nothing in this section shall require employees to change their method of commute. This section shall not be construed to absolve any employer or other party from any obligation required by an existing collective bargaining agreement with employees or any provision of law.

(c) For purposes of this section:

"Employee" means any person who is on the employer's payroll and works in a full-time or part-time position. The term includes any person who is entitled to payment of a minimum wage from an employer under the Hawaii minimum wage law.

"Employer" means any person, including corporate officers or executives, who directly or indirectly or through an agent of any other person, including through the services of a temporary

service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee.

"Transit pass" means any pass, token, fare card, voucher, or similar item entitling a person to transportation on public transit, including but not limited to travel by bus or train.

"Vanpool" means any highway vehicle that:

(1) Has the seating capacity of at least six adults, not including the driver; and

(2) Is reasonably expected to use at least eighty per cent of the mileage for the purpose of transporting a number of employees equal to at least fifty per cent of the seating capacity of the vehicle, not including the driver, in connection with travel between the residence and place of employment of employees. [L 2015, c 205, §2]

Note

Counties responsible for creating and implementing any commuter benefits programs established pursuant to this section. L 2015, c 205, §3.

" **[§46-16.3] Regulation of commercial bicycle tours.** Any law to the contrary notwithstanding, the council of any county may adopt and provide for the enforcement of ordinances regulating commercial bicycle tours on state and county highways, including but not limited to ordinances relating to the number of tours, the number of bicycles within a tour, scheduling of tours, physical spacing of tours, rules of the road, health and safety requirements, equipment maintenance, driver and guide qualifications, driver and guide drug testing, accident procedures and reporting, and financial responsibility requirements. Each county shall follow federal guidelines for commercial bicycle tours that begin from federal or state parks and continue on to state highways.

For the purposes of this section:

"Bicycle tour" includes both guided bicycle tours and unguided bicycle rental operations.

"County highway" has the same meaning as defined in section 264-1.

"State highway" has the same meaning as defined in section 264-1. [L 2007, c 181, §1]

" **§46-16.5 Public passenger vehicle regulation.** (a) The legislature finds and declares the following:

(1) The orderly regulation of vehicular traffic on the streets and highways of Hawaii is essential to the welfare of the State and its people;

(2) Privately-operated public passenger vehicle service provides vital transportation links within the State. Public passenger vehicle service operated in the counties enables the State to provide the benefits of privately-operated, demand-responsive transportation services to its people and to persons who travel to the State for business or tourist purposes;

(3) The economic viability and stability of privately-operated public passenger vehicle service is consequently a matter of statewide importance;

(4) The policy of the State is to promote safe and reliable privately-operated public passenger vehicle service to provide the benefits of that service. In furtherance of this policy, the legislature recognizes and affirms that the regulation of privately-operated public passenger vehicle service is an essential governmental function;

(5) The policy of the State is to require that counties regulate privately-operated public passenger vehicle service and not subject a county or its officers to liability under the federal antitrust laws;

(6) The policy of the State is to further promote privately-operated public passenger vehicle service, including but not limited to, the picking up and discharge of passengers from various unrelated locations by taxicabs; and

(7) The policy of the State is to further promote privately-operated public passenger vehicle service by requiring jitney services not regulated by the counties to be under the jurisdiction of the public utilities commission. For the purposes of this paragraph, "jitney services" means public transportation services utilizing motor vehicles that have seating accommodations for six to twenty-five passengers, operate along specific routes during defined service hours, and levy a flat fare schedule.

(b) Any other law to the contrary notwithstanding, where not within the jurisdiction of the public utilities commission, every county may provide rules to protect the public health, safety, and welfare by licensing, controlling, and regulating, by ordinance or resolution, public passenger vehicle service operated within the jurisdiction of the county; provided that the counties shall promote the policies set forth in subsection (a).

(c) Every county is empowered to regulate:

(1) Entry into the business of providing public passenger vehicle service within the jurisdiction of that county.

(2) The rates charged for the provision of public passenger vehicle service.

(3) The establishment of stands to be employed by one or a limited number of providers of public passenger vehicle service. [L 1986, c 120, §1; am L 1988, c 286, §2; am L 1995, c 98, §1]

" **§46-16.7 REPEALED.** L 2006, c 38, §29.

" **§46-16.8 County surcharge on state tax.** *[Section repealed December 31, 2027. L 2015, c 240, §7.]* (a) Each county may establish a surcharge on state tax at the rates enumerated in sections 237-8.6 and 238-2.6. A county electing to establish this surcharge shall do so by ordinance; provided that:

(1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance;

(2) The ordinance shall be adopted prior to December 31, 2005; and

(3) No county surcharge on state tax that may be authorized under this subsection shall be levied prior to January 1, 2007, or after December 31, 2022, unless extended pursuant to subsection (b).

Notice of the public hearing required under paragraph (1) shall be published in a newspaper of general circulation within the county at least twice within a period of thirty days immediately preceding the date of the hearing.

A county electing to exercise the authority granted under this subsection shall notify the director of taxation within ten days after the county has adopted a surcharge on state tax ordinance and, beginning no earlier than January 1, 2007, the director of taxation shall levy, assess, collect, and otherwise administer the county surcharge on state tax.

(b) Each county that has established a surcharge on state tax prior to [July 1, 2015,] under authority of subsection (a) may extend the surcharge from January 1, 2023, until December 31, 2027, at the same rates. A county electing to extend this surcharge shall do so by ordinance; provided that:

(1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance; and

(2) The ordinance shall be adopted prior to July 1, 2016, but no earlier than July 1, 2015.

A county electing to exercise the authority granted under this subsection shall notify the director of taxation within ten days after the county has adopted an ordinance extending the surcharge on state tax. Beginning on January 1, 2023, the director of taxation shall levy, assess, collect, and otherwise administer the extended surcharge on state tax.

(c) Each county that has not established a surcharge on state tax prior to [July 1, 2015,] may establish the surcharge at the rates enumerated in sections 237-8.6 and 238-2.6. A county electing to establish this surcharge shall do so by ordinance; provided that:

(1) No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance;

(2) The ordinance shall be adopted prior to July 1, 2016, but no earlier than July 1, 2015; and

(3) No county surcharge on state tax that may be authorized under this subsection shall be levied prior to January 1, 2018, or after December 31, 2027.

A county electing to exercise the authority granted under this subsection shall notify the director of taxation within ten days after the county has adopted a surcharge on state tax ordinance. Beginning on January 1, 2018, the director of taxation shall levy, assess, collect, and otherwise administer the county surcharge on state tax.

(d) Notice of the public hearing required under subsection (b) or (c) before adoption of an ordinance establishing or extending the surcharge on state tax shall be published in a newspaper of general circulation within the county at least twice within a period of thirty days immediately preceding the date of the hearing.

(e) Each county with a population greater than five hundred thousand that adopts or extends a county surcharge on state tax ordinance pursuant to subsection (a) or (b) shall use the surcharges received from the State for:

(1) Capital costs of a locally preferred alternative for a mass transit project; and

(2) Expenses in complying with the Americans with Disabilities Act of 1990 with respect to paragraph (1).

The county surcharge on state tax shall not be used to build or repair public roads or highways, bicycle paths, or support public transportation systems already in existence prior to July 12, 2005.

(f) Each county with a population equal to or less than five hundred thousand that adopts a county surcharge on state tax ordinance pursuant to this section shall use the surcharges received from the State for:

(1) Operating or capital costs of public transportation within each county for public transportation systems, including public roadways or highways, public buses, trains, ferries, pedestrian paths or sidewalks, or bicycle paths; and

(2) Expenses in complying with the Americans with Disabilities Act of 1990 with respect to paragraph (1).

(g) As used in this section, "capital costs" means nonrecurring costs required to construct a transit facility or system, including debt service, costs of land acquisition and development, acquiring of rights-of-way, planning, design, and construction, and including equipping and furnishing the facility or system. For a county with a population greater than five hundred thousand, capital costs also include non-recurring personal services and other overhead costs that are not intended to continue after completion of construction of the minimum operable segment of the locally preferred alternative for a mass transit project. [L 2005, c 247, §§2, 9; am L 2015, c 240, §3]

Revision Note

"July 12, 2005" substituted for "the effective date of this Act".

Attorney General Opinions

Act 247, Session Laws of Hawaii 2005, was not a complete delegation of the State's taxing authority. The legislature retains the power to change, by new legislation, all aspects of the county surcharge, including repealing the county surcharge in its entirety. Att. Gen. Op. 15-1.

Subsections (e) and (f) discussed in determining that the provision requiring ten per cent of the county surcharge be withheld as general fund realizations did not create a conflict within the intent of Act 247, Session Laws of Hawaii 2005. Att. Gen. Op. 15-1.

" **§46-17 Regulation of certain public nuisances.** Any provision of law to the contrary notwithstanding, the council of any county may adopt and provide for the enforcement of ordinances regulating or prohibiting noise, smoke, dust, vibration, or odors which constitute a public nuisance. No such ordinance shall be held invalid on the ground that it covers any subject or matter embraced within any statute or rule of the State; provided that in any case of conflict between a statute

or rule and an ordinance, the law affording the most protection to the public shall apply, with the exception that:

(1) An ordinance shall not be effective to the extent that it is inconsistent with any permit for agricultural burning granted by the department of health under authority of chapter 342B, or to the extent that it prohibits, subjects to fine or injunction, or declares to be a public nuisance any agricultural burning conducted in accordance with such a permit; and

(2) An ordinance shall not be effective to the extent that it is inconsistent with any noise rule adopted by the department of health under authority of chapter 342F. [L 1974, c 158, §2; am L 1978, c 120, §1; am L 1994, c 5, §1; am L 1999, c 265, §2]

Cross References

Adoption of state community noise code, see §342F-30.5.
Leaf blowers; restrictions, see §§342F-30.8 and 342H-36.5.

" **§46-18 Central coordinating agency.** (a) Each county shall, by ordinance, designate an existing agency within each county which shall be designated as the central coordinating agency and in addition to its existing functions shall:

(1) Maintain and continuously update a repository of all laws, rules and regulations, procedures, permit requirements and review criteria of all federal, state and county agencies having any control or regulatory powers over land development projects within such county and shall make said repository and knowledgeable personnel available to inform any person requesting information as to the applicability of the same to a particular proposed project within the county;

(2) Study the feasibility and advisability of utilizing a master application form to concurrently file applications for an amendment to a county general plan and development plan, change in zoning, special management area permit and other permits and procedures required for land development projects in the county to the extent practicable with one master application;

(3) Maintain and continuously update a master file for the respective county of all applications for building permits, subdivision maps, and land use designations of the State and county;

(4) When requested by the applicant, endeavor to schedule and coordinate, to the extent practicable, any referrals, public informational meetings, or any public hearings with those held by other federal, state, or county commissions or agencies, or any combination thereof, pursuant to existing laws pertaining to the respective county; and

(5) When requested by the applicant, endeavor to schedule and coordinate, to the extent practicable, a single joint public hearing when multiple permits from state or county commissions or agencies, or any combination thereof, require a public hearing.

(b) All state and county departments, divisions, agencies, and commissions, with control or regulatory or advisory powers over land development projects in any county of the State, are authorized to enter into memoranda of understanding for the purpose of promoting joint processing of public hearings. The county departments and agencies, subject to ordinances enacted by the county councils, shall consult with the designated central coordinating agency of each county and shall adopt rules under chapter 91 establishing the order in which multiple permits take precedence and setting the conditions under which the joint public hearing must be held and the time periods within which the hearing and action for multiple permit processing shall occur.

(c) All state and county departments, divisions, agencies and commissions, with control or regulatory powers over land development projects in any county of the State shall cooperate with the designated central coordinating agency of each county in making available and updating information regarding laws, rules and regulations, procedures, permit requirements and review criteria they enforce upon land development projects.

(d) Each county shall adopt ordinances required by this section by September 1, 1977, and each designated central coordinating agency shall compile the repository required by subsection (a) and adopt necessary rules pursuant to chapter 91 to implement this section by December 31, 1977. [L 1977, c 74, §2; am L 1994, c 260, §1]

Law Journals and Reviews

Arrow of Time: Vested Rights, Zoning Estoppel, and Development Agreements in Hawai‘i. 27 UH L. Rev. 17.

" **[§46-19] Development of alternative energy resources.** Each of the counties may participate in the development of alternative energy resources defined as geothermal, solar, wind,

ocean power, biomass and solid wastes in joint venture with an end user or public utility pursuant to a plan for the direct utilization of the energy sources by an end user or public utility; provided that should a joint-venture partner not be available the counties may proceed with the development of alternate energy resources for their own consumption or for the furtherance of a plan for direct utilization by an end user or public utility. [L 1978, c 36, §1]

" **§46-19.1 Facilities for solid waste processing and disposal and electric generation; financing; sale.** (a) In addition to any other powers provided by law, any county may issue general obligation bonds to finance a facility for the processing and disposal of solid waste, or generation of electric energy, or both, pursuant to section [47-4], and provide for interest on the bonds which will accrue during the construction period. Any such facility shall be and constitute an undertaking as defined in section 49-1, and all revenues derived from the services and commodities furnished by the undertaking, including the disposal of solid waste and the sale of steam and electric energy and recovered materials, shall constitute revenues of the undertaking.

Any law to the contrary notwithstanding, and particularly section 47-7, bonds issued pursuant to this section to finance a facility for the processing and disposal of solid waste or generation of electric energy, or both may be sold at competitive or negotiated sale at whatever price or prices, may bear interest at whatever rate or rates payable at whatever time or times, and may be made redeemable before maturity at the option of the county, the holder, or both at whatever price or prices and upon whatever terms and conditions as the governing body of the county or, if authorized by the governing body of the county, the director of finance may determine.

If bonds issued pursuant to this section for the processing and disposal of solid waste and generation of electric energy are issued bearing interest at rates which vary from time to time and with a right of the holders to put the bonds, all as provided in the proceedings authorizing the issuance thereof, any county may contract for support facilities and remarketing arrangements as are required to market the bonds to the greatest advantage of the county upon such terms and conditions as the governing body of the county shall approve by resolution. The county may enter into contracts or agreements with the entity or entities providing a support facility as aforesaid as the governing body of the county shall approve by resolution; provided that any contract or agreement shall provide, in essence, that any amounts due and owing by the county under the

contract or agreement on an annual basis shall be subject to annual appropriations by the county, and any obligation issued pursuant to the terms of the contract or agreement in the form of bonds, notes, or other evidences of indebtedness shall arise only when moneys or securities have been irrevocably set aside for the full payment of a like principal amount of bonds issued pursuant to this section. The selection of entities to provide a support facility or to remarket bonds may be in such manner and upon such terms and conditions as the governing body shall approve by resolution.

(b) If the governing body of the county shall find that the sale of a facility for the processing and disposal of solid waste, or generation of electric energy, or both will not deprive the county of the availability of the facility and will result in a reduction to the county of the costs of the facility, any law to the contrary notwithstanding, any county may sell a facility financed pursuant to this section at competitive or negotiated sale at such price and upon such terms and conditions as the governing body shall approve by resolution. The sale may be pursuant to an installment sales contract or such other form of agreement as the governing body shall approve by resolution. A facility sold as authorized by this subsection shall continue to constitute a public undertaking as provided in subsection (a), and the proceeds of such sale shall constitute revenues derived from the services and commodities furnished by the undertaking.

(c) A county may lease any facility sold as authorized by this section or enter into an operating agreement or other arrangement with the purchaser or a lessee of the purchaser of the facility upon such terms and conditions as the governing body shall approve by resolution. So long as a facility sold as authorized by this section is available to the county, notwithstanding that availability is conditioned on payment of reasonable fees for the services and commodities furnished thereby, the facility shall be deemed used for a public purpose and payment of the costs of construction shall constitute a purpose for which bonds may be issued as authorized by subsection (a).

(d) Insofar as this section is inconsistent with the provisions of any law or charter, this section shall control. The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law or charter, and bonds may be issued and a facility financed from the proceeds thereof may be sold as authorized by this section notwithstanding any debt or other limitation prescribed by any other law or charter. [L 1985, c 291, §1; am L 1988, c 57, §3]

" **[§46-19.4 Priority permitting process for renewable energy projects.]** All agencies shall provide priority handling and processing for all county permits required for renewable energy projects.

For purposes of this section, "agencies" means any executive department, independent commission, board, bureau, office, or other establishment of a county, or any quasi-public institution that is supported in whole or in part by county funds. [L 2007, c 205, §2]

Cross References

Other related sections, see §§196-1.5, 201-12.5, 201N-14, and 226-18(c)(10).

" **§46-19.5 Energy conservation standards for building design and construction.** (a) Energy efficiency building standards based on the design requirements for improvements of energy utilization in buildings developed and approved by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Incorporated (ASHRAE 90.1), shall be incorporated by each county into its building code by October 24, 1994. The standards shall apply to all buildings, including state buildings; provided that the standards for renovated buildings shall only apply to the renovated system or elements of the building.

(b) The energy efficiency building standards shall not apply to exempted buildings. For the purposes of this section, "exempted building" means:

(1) Any building owned or leased in whole or in part by the United States; and

(2) Any building that is deliberately preserved beyond its normal term of use because of historic significance, architectural interest, or public policy or that qualifies for special historic building code provisions.

For special applications such as hospitals, laboratories, thermally sensitive equipment, computer rooms, and manufacturing and industrial processes, the design concepts and parameters shall conform to the requirements of the application at minimum energy levels, provided that where these special applications are described in the ASHRAE handbook and product directory, applications volume, the criteria described therein shall be used.

(c) The energy efficiency building standards shall be enforced at the time of construction of a new building or at the time of major addition, alteration, or repair of an existing

building when the proposed major addition, alteration, or repair must comply with the standards applicable to new buildings under the applicable county building code. No official of the State nor of any county charged with the enforcement of laws or ordinances pertaining to the construction or alteration of buildings or structures shall accept or approve any plan or specification including or pertaining to the design and construction details and standards for a heating or cooling system unless the energy efficiency building standards are met. All such plans and specifications submitted with or in connection with an application for a building or construction permit shall bear the certification by a registered architect or engineer that the plans and specifications comply with the energy efficiency building standards.

(d) At such time as performance standards that address the overall energy performance of buildings are promulgated pursuant to the Energy Conservation Standards for New Buildings Act of 1976, Title III of the Energy Conservation and Production Act, Public Law 94-385, such standards shall be considered for adoption by each county and shall be incorporated into its building code in addition to the standard adopted pursuant to subsection (a) above, as required by federal law. [L 1978, c 133, §1; am L 1994, c 168, §1]

Cross References

Other related sections, see §§36-41, 103D-410, and chapter 196.

" **§46-19.6 [OLD] REPEALED.** L 1994, c 168, §2.

[§46-19.6] County building permits; incorporation of energy and environmental design building standards in project design; priority processing. (a) Each county agency that issues building, construction, or development-related permits shall establish a procedure for the priority processing of a permit application submitted by a private entity for a construction project that incorporates energy and environmental design building standards into its project design. The permit processing procedure shall give priority to private sector permit applicants at no additional cost to the applicant. Any priority permit processing procedure established by a county pursuant to this section shall not imply or provide that any permit application filed under the priority processing procedure shall be automatically approved.

(b) For the purposes of this section:

"Energy and environmental design building standards" means the leadership in energy and environmental design silver or two green globes rating system or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system.

"Private entity" means any permit applicant that is not the State, a county, the federal government, or any political subdivision thereof. [L 2006, c 96, §29]

" **[§46-19.7] Individual shower control valves required.** Every county building code shall require that all showers in new dwelling units shall be equipped with individual shower control valves of the pressure balance or the thermostatic mixing valve type unless the temperature of the water serving the showers is limited to 110 degrees Fahrenheit. The requirements of this section shall be applicable to building permits issued after December 31, 1992. [L 1991, c 305, §2]

" **[§46-19.8] Fire sprinklers; residences.** *[Section repealed June 30, 2017. L 2012, c 83, §3.]* No county shall require the installation or retrofitting of automatic fire sprinklers or an automatic fire sprinkler system in:

(1) Any new or existing detached one- or two-family dwelling unit in a structure used only for residential purposes; and

(2) Nonresidential agricultural and aquacultural buildings and structures located outside an urban area;

provided that this section shall not apply to new homes that require a variance from access road or firefighting water supply requirements. [L 2012, c 83, §1]

" **[§46-20] Regulation of sewerage and wastewater treatment systems.** Effective July 1, 1987, counties may implement programs for the regulation of sewerage and wastewater treatment systems in their respective county jurisdictions; except that a county program shall be implemented by that county immediately upon receipt of state funds pursuant to section 27-21.6(5). Each county is authorized to adopt ordinances and rules on the design, construction, and operation of sewerage and treatment systems and shall submit to the director of health, for approval, a full and complete description of the program it proposes to establish and administer under county laws. [L 1985, c 282, §2]

" **[§46-20.1] County ownership of sewer transmission lines and facilities servicing Hawaiian home lands.** (a) All sewer transmission lines and other sewerage facilities servicing

Hawaiian home lands existing on [July 7, 2014,] that were developed, constructed, operated, improved, or maintained by a county, or for which a county otherwise has an obligation to operate, improve, repair, maintain, or replace, are confirmed to be owned by the county in which the sewer lines and facilities are located, including those lines and facilities located on Hawaiian home lands.

(b) Upon demand by the department of Hawaiian home lands, each county shall accept the license or dedication and ownership of any and all sewer transmission lines and other sewerage facilities servicing Hawaiian home lands and that are not subject to subsection (a), as may be identified by the department of Hawaiian home lands; provided that:

(1) Any sewer lines or other sewerage facilities:
    (A) Not subject to subsection (a);
    (B) Existing before [July 7, 2014]; and
    (C) That the appropriate county determines are not in substantial compliance with environmental laws, rules, and regulations pertaining to the dedication or license of the sewers to the counties at the time of their construction,

shall be brought into compliance with those laws, rules, and regulations by the department of Hawaiian home lands prior to acceptance by the county; and

(2) Sewer transmission lines and other sewerage facilities completed after [July 7, 2014,] shall comply with all applicable federal, state, and county environmental, design, and construction requirements prior to acceptance by a county.

(c) Each county shall operate, improve, repair, maintain, and replace, as necessary, the sewer transmission lines and other sewerage facilities that are subject to subsection (a) or (b).

(d) No county shall abandon or terminate the service of sewer transmission lines and other sewerage facilities subject to this section without the approval of the department of Hawaiian home lands; provided that the department shall not unreasonably withhold approval if abandonment or termination is necessary. If sewer transmission lines or other sewerage facilities are abandoned or terminated, the appropriate county shall make alternate sewer transmission lines and other facilities available to service the affected Hawaiian home lands. [L 2014, c 227, §2]

" **[§46-20.5] Regulation of towing operations.** Any law to the contrary notwithstanding, the council of any county may adopt and provide for the enforcement of ordinances regulating

towing operations, including but not limited to ordinances relating to rates, equipment standards, hours of operation, storage and safeguarding of towed vehicles, records retention and inspection, insurance requirements, vehicle operator requirements, and tax clearances; provided that an ordinance shall not be effective to the extent that it is inconsistent with any law or department of health rule governing solid waste salvage facilities. [L 2003, c 84, §1]

"PART II. OFFICERS AND EMPLOYEES

§46-21 REPEALED. L 1970, c 26, §3.

" **§46-21.5 REPEALED.** L 1985, c 146, §2.

" **§46-22 Compensation of certain county officials.** Any law to the contrary notwithstanding, each county, including the city and county of Honolulu, by ordinance shall fix the salaries for its officials whose salaries are presently specifically established by statute or ordinance. [L 1965, c 223, §10; Supp, §138-5.5; HRS §46-22]

Case Notes

Includes power to amend Honolulu Charter. 50 H. 277, 439 P.2d 206.

Constitutionality of state law prohibiting salary increases of certain county officers and employees upheld. 67 H. 412, 689 P.2d 757.

" **[§46-22.1 Salaries of members of council.]** Any law or county charter to the contrary notwithstanding, effective July 1, 1969, the salaries of the members of the county legislative bodies shall be as follows:

(1) In counties with more than 100,000 population:

	Per Year
Chairperson of the council.....	$16,000
Members of the council (each).....	14,000

(2) In counties with less than 100,000 population:

Chairperson of the council.....	12,000
Members of the council (each).....	10,800

[L 1969, c 127, §29; gen ch 1993]

" **§46-23 Salaries of department heads, deputies, assistants; fixed how.** Salaries of appointive heads of departments and salaries of deputies or assistants of any department, whose head is elected or appointed, shall be fixed by the council of the

respective county governments where no other provision is made in the Hawaii Revised Statutes, or any amendatory acts thereto, for fixing the salaries. [L 1951, c 221, §4; RL 1955, §138-6; HRS §46-23]

" **§46-24 Limitation on salary of first deputy or assistant.** Notwithstanding any other law to the contrary, the salary of any first deputy or first assistant to the head of any department of the county governments shall not exceed a sum equal to ninety-five per cent of the salary of such department head. [L 1957, c 170, §4; am L 1959, c 255, §10a; am imp L 1965, c 223, pt of §5; Supp, §5-20; HRS §46-24]

Attorney General Opinions

Discussed. Att. Gen. Op. 63-47.

" **§46-25 Salaries of county officers and employees; moneys payable into treasury.** The salaries provided by law for county officers or employees shall be in full compensation for all services rendered, and every officer or employee shall pay all moneys belonging to the county coming into the officer's or employee's hands as such officer or employee, no matter from what source derived or received, into the county treasury within thirty days after receipt of the same. [L 1921, c 8, §1; RL 1925, §2187; RL 1935, §2321; am L 1939, c 242, pt of §1; RL 1955, §138-5; HRS §46-25; gen ch 1985]

" **§46-25.5 Expenses.** Subject to section 78-32 and procedures prescribed by the director of finance of the county and approved by the mayor, all officers and employees of each county shall be entitled to travel or other necessary expenses in the performance of their official duties as provided by ordinance. [L 1975, c 34, §1; am L 2016, c 158, §2]

" **§46-26 Bonds of county officers; form.** Every bond required to be given by any officer, deputy, assistant, clerk, or employee, in any department, bureau, office, or service, of any county, shall be made payable to the county, and shall be in such form as the officer with whom the bond is required to be deposited prescribes; provided that no such bond shall be deemed sufficient or be accepted unless the surety thereon is a corporation such as is mentioned in section 78-20. [L 1915, c 67, §1; RL 1925, §2170; RL 1935, §2310; am L 1939, c 242, pt of §1; RL 1945, §6001; am L 1955, c 104, §1; RL 1955, §138-1; HRS §46-26]

" **§46-27 Approval of bonds.** The sufficiency of the bonds of the members of the several councils and the mayor of the city and county of Honolulu shall be approved by a judge of the circuit court having jurisdiction over or within the county, and all other bonds shall be approved as to sufficiency by the officer with whom the same are required to be deposited. [L 1915, c 67, §2; RL 1925, §2171; RL 1935, §2311; am L 1939, c 242, pt of §1; RL 1945, §6002; RL 1955, §138-2; HRS §46-27]

" **§46-28 Extent of liability.** Every bond required or given under the authority of this chapter shall be construed to cover all duties now or hereafter required, prescribed, or defined by any law, or by the appointment or employment of the obligor, and all duties required of the obligor by the terms, provisions, or conditions of any law, or by the obligor's appointment, employment, or position, or by any departmental rule or regulation, or by any direction, order, or command of the head of the department, office, bureau, or service in question, and all duties and acts undertaken, assumed or performed by the obligor, by virtue or color of the obligor's office, appointment, or employment, and all the duties and acts shall be considered to have been undertaken, assumed, performed, or done as the case may be by specific requirement of statute, whether the obligor undertaking, assuming, performing, or doing any such duty or act, is designated, described, named in, or recognized by any statute or not. No surety shall be released or relieved from liability upon any bond by reason of the fact that the office, appointment, employment, or position, held, occupied, assumed, or undertaken by the obligor is not specifically named in or recognized by any statute, or by reason of the fact that any or all of the duties or acts undertaken, assumed, or performed by the obligor by virtue or color of the obligor's office, appointment, employment, or position are not specifically required, defined, or prescribed by any statute or departmental rule or regulation made under the express or implied authority of any statute.

No bond shall be held void for any formal defects therein. [L 1915, c 67, §3; RL 1925, §2172; RL 1935, §2312; RL 1945, §6003; RL 1955, §138-3; HRS §46-28; gen ch 1985]

" **§46-29 Certain notarial powers conferred upon county officers.** Wherever by law any affidavit under oath or any statement or other document to be acknowledged is required to be filed with the chief of police, treasurer, director of finance, clerk, or council of any county as a condition to the granting of any license or the performance of any act by any person, or by any county officer, the chief of police, treasurer, director

of finance, or clerk, their deputy or deputies, of the county, shall take the oath or acknowledgment, free of charge, keeping records thereof as required by law of notaries public; provided that nothing herein shall prevent any person desiring so to do from making the oath or acknowledgment before any duly authorized notary public, subject to the notary's legal fees therefor. [L 1919, c 9, §1; RL 1925, §2174; am imp L 1932 1st, c 1, pt of §1; RL 1935, §2314; RL 1945, §6005; RL 1955, §138-4; HRS §46-29; gen ch 1985]

" **§46-30 Transfer of civil service personnel on reorganization.** Every civil service employee or officer of any county or city and county transferred or appointed to a civil service position as a consequence of the reorganization of any governmental department, board, commission or office or of any bureau, division, or subdivision thereof, shall be continued as a civil service employee or officer, in the position to which the employee or officer is transferred or appointed, without change in civil service status, reduction in salary range, loss of vacation or sick leave allowances, service credits, or other rights and privileges and without the necessity of examination; provided that such employee or officer possesses at the time of the transfer or appointment, the minimum qualification for the position to which the employee or officer is transferred or appointed; provided further that subsequent changes in status may be made pursuant to applicable personnel laws. [L 1961, c 117, §1; Supp, §138-44; HRS §46-30; gen ch 1985]

" **§46-31 Transfer of noncivil service personnel on reorganization.** Every noncivil service employee or officer of any county or city and county transferred or appointed to a civil service position as a consequence of the reorganization of any governmental department, board, commission, or office or any bureau, division, or subdivision thereof, shall become a civil service employee as of the date of the transfer or appointment without loss of vacation or sick leave allowances, service credits, or other rights and privileges and without the necessity of examination; provided that the employee or officer possesses, at the time of the transfer or appointment, the minimum qualifications for the position to which the employee or officer is transferred or appointed; provided further that subsequent changes in status may be made pursuant to applicable personnel laws. This section shall not apply to provisional, temporary, or contractual employees at the time of reorganization. [L 1961, c 117, §2; Supp, §138-45; HRS §46-31; gen ch 1985]

" **§46-32 Employees of council.** Any other provision to the contrary notwithstanding, the council of any county may appoint and employ personnel as it deems necessary and prescribe their powers, duties and compensation. All such personnel shall be exempt from the civil service and the position classification plan. Nothing in this section shall be deemed to affect the civil service or exempt status, salary range, vacation, sick leave, service credit and other rights and privileges of any incumbent as it existed on the day prior to May 9, 1977; provided that subsequent changes may be made pursuant to applicable personnel laws. [L 1969, c 78, §1; am L 1977, c 62, §1]

Revision Note

"May 9, 1977" substituted for "the effective date of this section".

" **§46-33 Exemption of certain county positions.** In any county with a population of 500,000 or more, the civil service to which this section refers is comprised of all positions in the public service of such county, now existing or hereafter established, and embraces all personal services performed for such county, except the following:

(1) Positions of officers elected by public vote; positions of heads of departments; position of the clerk; position of the manager of the board of water supply and position of the chief of police.
(2) Positions in the office of mayor, but such positions, except those of the heads of the offices of information and complaint and budget director, shall be included in the position classification plan. Employees of the municipal library and of the offices of information and complaint and budget director, other than the heads of such offices, however, shall not be exempted from civil service.
(3) Positions of deputies of the corporation counsel, deputies of the prosecuting attorney, and law clerks.
(4) Positions of members of any board, commission, or equivalent body.
(5) Positions filled by inmates, patients, or students in city institutions or in the schools.
(6) Positions of district magistrates, jurors, and witnesses.
(7) Personal services obtained by contract where the director of civil service has certified that the service is special or unique, is essential to the

public interest and that, because of circumstances surrounding its fulfillment, personnel to perform such service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year.

(8) Personal services of a temporary nature needed in the public interest where the need for the same does not exceed ninety days, but before any person may be employed to render such temporary service the director of civil service shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable. The employment of any person for service of a temporary nature may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director subject to approval of the civil service commission.

(9) Personal services performed on a fee, contract or piecework basis by persons who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the city and such fact is certified to by the director of civil service.

(10) Positions of temporary election clerks in the office of the clerk employed during the election periods, but the positions filled by such employees shall be included in the position classification plan.

(11) Positions of one first deputy and private secretaries to heads of departments and their first deputies, but private secretarial positions shall be included in the position classification plan. The first deputy in the department of civil service, however, shall not be exempt from civil service.

The director of civil service shall determine the applicability of this section to specific positions. [L 1970, c 181, §1; am L 1990, c 219, §1]

Attorney General Opinions

Provisions of civil service laws construed in light of Konno v. County of Hawaii decision for purposes of privatization. Att. Gen. Op. 97-6.

" **[§46-34] Civil service exemptions.** Any other provision to the contrary notwithstanding in any county charter or otherwise, all employees of any county legal department of the executive branch shall be subject to chapter 76, except for the department head, all attorneys, law clerks, private secretary to the department head and positions under sections 76-77(7), 76-77(8), 76-77(11) and 76-77(12). [L 1977, c 30, §1]

" **§46-35 Firefighters, counsel for.** Whenever any firefighter is prosecuted for any crime for acts done in the performance of the firefighter's duty as a firefighter, or any traffic violation while in the course of operating any firefighting apparatus or other authorized emergency vehicle of the fire department, or sued in any civil cause for acts done in the performance of the firefighter's duty as a firefighter, the firefighter shall be represented and defended,

(1) In the criminal and traffic violations proceedings by an attorney to be employed and paid by the council, and

(2) In the civil case by the corporation counsel or county attorney, as the case may be. [L 1970, c 178, §1; am L 1983, c 124, §15; gen ch 1985]

" **§46-36 Authority of counties to engage in the process of managed competition; established.** (a) Subject to the approval of the governor and the respective mayor of the county, the agency designated by the mayor with the responsibility to oversee the managed process for public-private competition for government services shall:

(1) Assist the mayor in formulating the county's philosophy for public collective bargaining and for the managed process for public-private competition for government services, including which particular service can be provided more efficiently, effectively, and economically considering all relevant costs; and

(2) Coordinate and negotiate the terms and conditions or the managed competition process on behalf of the county with exclusive representatives of affected public employees and private contractors.

(b) If a county executes a contract with a private contractor pursuant to the managed competition process authorized under this section, the county may use the layoff provisions of the civil service laws and the respective collective bargaining contracts to release employees displaced from their positions by the managed competition process. Prior to implementing any layoff provision of the civil service laws or a collective bargaining contract, the county shall use its

resources for placing, retraining, and providing voluntary severance incentives for displaced employees. Methods that may be used to minimize or avoid the adverse effects of an agency's decision to secure needed services from contractors may include:

(1) Coordination with the private service provider awarded the contract under this section to continue a displaced employee's employment as an employee of the contractor;

(2) Reassignment to another civil service position the employee is qualified to fill;

(3) Retraining to qualify the employee for reassignment; and

(4) Severance incentives.

(c) As used in this section, "managed competition" means the process established in this section by which the county and a private contractor compete to provide government services. [L 2001, c 90, §3; am L 2002, c 106, §1]

"**PART III. FISCAL ADMINISTRATION**

§46-41 Budgets; financial records on fiscal year basis. Except as otherwise provided in this chapter, all counties shall maintain accounting and financial records on a fiscal year basis, beginning on July 1 or another day of a calendar year and ending on the appropriate day of the next succeeding calendar year. Counties may prepare a budget for a one- or two-year period; provided that accounting and financial records are maintained on a fiscal year basis as described above. [L 1965, c 166, §1; Supp, §138-6.5; HRS §46-41; am L 1993, c 169, §1; am L 2006, c 119, §1]

" **§46-42 Reports by fiscal officers.** The director of finance of each county shall prepare and submit to the council, transmit to the comptroller of the State, and publish in a newspaper of general circulation in the county, immediately following the close of each fiscal year, a statement of income and expenditure by funds, showing the principal sources of revenue, the function or purpose for which expenditures were made, together with a consolidated statement showing similar information for all funds; also a statement showing the balance in each fund at the beginning of the fiscal year, plus the receipts minus the disbursements, and the balance on hand at the close of the fiscal year after deducting outstanding warrants and vouchers.

The director of finance may publish totals of expenses made by administrative departments for administration and executive purposes. [L 1913, c 21, §1; am L 1917, c 205, §1; RL 1925,

§2173; am L 1927, c 46, §1; RL 1935, §2313; am L 1941, c 248, §1; RL 1945, §6004; RL 1955, §138-7; am L 1957, c 152, §1; am imp L 1965, c 166, §1; HRS §46-42; gen ch 1985]

Case Notes

County auditor publishes annual report and board of supervisors awards contract and printing of same. 36 H. 355.

" **§46-43 County records.** (a) Notwithstanding the provisions of any other law to the contrary, the county legislative body shall determine whether, and the extent to which, the county shall create, accept, retain, or store in electronic form any records and convert records to electronic form.

(b) The director of finance of each county, with the approval of the legislative body and the legal advisor of the county, may authorize the destruction by burning, machine shredding, chemical disintegration, or other acceptable method of disposal of:

(1) All warrants of the county that have been paid and that bear any date ten years prior to the date of destruction; and

(2) All bonds and interest coupons of the county that have been canceled or paid and that bear any date two years prior to the date of destruction.

(c) The director of finance, with the approval of the county legislative body and the county's legal advisor, shall determine the care, custody, and disposition of other county records and may destroy all vouchers, documents, and other records or papers, exclusive of records required either by law or by the legislative body of the county to be permanently retained, that have been on file or retained for a minimum period to be determined by the legislative body of the county by resolution. [L 1947, c 146, pt of §1; RL 1955, §138-8; am L 1963, c 22, §1; am L 1965, c 95, §1; HRS §46-43; gen ch 1985; am L 2005, c 177, §2]

" **§46-44 REPEALED.** L 2005, c 177, §7.

" **§46-44.5 Lapsed warrant.** Any law to the contrary notwithstanding, any warrant drawn upon any county treasury shall be presented for payment before the close of the fiscal year next after the fiscal year in which it has been issued. All warrants not so presented within that time shall be deemed to be lapsed and shall not be paid, and any money held in the county treasury for payment of the warrant shall thereupon be

transferred to a trust fund established and known as the lapsed warrants trust fund; provided that the fund balance in the trust fund shall not exceed $500,000 and any excess of that amount shall be transferred to the general fund; provided that within the period of four fiscal years immediately following the year in which the warrant was lapsed, the payee or assignee of the warrant, or, if the payee is deceased, the personal representative of the estate of the payee, or if the estate of the payee is closed, to any person lawfully entitled to the undisposed property of the deceased payee, shall be entitled to payment of the amount of the warrant out of the trust fund upon filing with the director of finance of the county a claim for recovery supported by evidence that may be deemed satisfactory by the director. [L 1974, c 56, §1; am L 1976, c 200, pt of §1; am L 1998, c 298, §1]

" **§46-45 Excessive expenditures; penalty.** No council, or other board, committee, department, bureau, officer, or employee of any county shall expend, or aid or participate in expending, during any period of time for any purpose, except for and in the exercise by the county of the power of eminent domain, any sum in the absence of an appropriation for the purpose for the period, or any sum in excess of an appropriation, if any, for the purpose for the period, or incur, authorize, or contract, or aid or participate in incurring, authorizing, or contracting, during any fiscal year, liabilities or obligations, whether payable during the fiscal year or not, for any or all purposes, except for and in the exercise by the county of the power of eminent domain, in excess of the amount of money available for the purposes for the county during the year. Any person who violates this section shall be fined not more than $1,000 or imprisoned not more than one year, or both. [L 1911, c 72, §1; RL 1925, §2178; RL 1935, §2315; am L 1941, c 247, §1; RL 1945, §6006; RL 1955, §138-10; HRS §46-45]

Case Notes

Contract void without prior appropriation. 33 H. 817.

Indictment of supervisors for incurring liabilities in excess of money available. 25 H. 381.

Requirements of statute do not apply where another statute expressly mandates payment. 33 H. 731.

" **§46-46 Excess expenditures; when permitted.** Any provision of law to the contrary notwithstanding, the council of any county may, with the prior approval of the governor and the state director of finance, and upon the authority of the

council, any duly authorized department, bureau, officer, or employee of the county may, (1) incur, authorize, and contract, during any fiscal year, liabilities and obligations, whether payable during the fiscal year or not, for any and all purposes, in excess of the moneys available for the purposes of the county during the year, provided that in the case of the county of Hawaii, Kauai, or Maui, the total of liabilities and obligations incurred, authorized, or contracted during any fiscal year in excess of the moneys available to the county during the year shall not exceed $100,000, and in the case of the city and county of Honolulu shall not exceed $250,000, and (2) pay such liabilities and obligations out of any moneys borrowed from the State under section 36-23. [L 1949, c 342, §2; RL 1955, §138-11; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §46-46]

" **§46-47 Franchise fees, disposition of.** All moneys received by any county from any public utility corporation under the provisions of the franchise granted to the corporation shall be kept in the highway fund created by section 249-18 and expended on the construction, maintenance, improvement, and repair of public roads and highways of the county in which the same are received, including for the purposes of this section, the installation, maintenance, and repair of street lights and power, and other charges for street lighting purposes as well as the replacement of old street lights, and footpaths or sidewalks; provided that in the city and county of Honolulu the city council may provide for the maintenance of the traffic department, for other purposes and functions connected with the prevention of automobile accidents and preservation of safety upon the highways and streets in the city and county of Honolulu, and for the establishment and maintenance, under the direction of the police department, of one or more vehicle testing stations, from the moneys. [L 1923, c 106, §1; RL 1925, §2179; am L 1927, c 32, §1; RL 1935, §2316; am L 1939, c 130, §1; am L 1941, c 314, §1; RL 1945, §6007; am L 1945, c 83, §2; am L 1955, c 183, §2; RL 1955, §138-12; HRS §46-47]

" **§46-48 Deposit of funds in banks.** Chapter 38, relating to the deposit of state moneys in banks, is extended to the several counties, so that each county and its director of finance and mayor, respectively, shall have all the rights, powers, obligations and duties in respect of the moneys of the counties as the State, its director of finance and governor, respectively, have in respect of the moneys of the State under chapter 38, provided that nothing in this section contained shall be held to preclude the director of finance of any county from making special deposits, with the approval of the council

or the mayor, as the case may be, for the safekeeping of public moneys, other than those deposited in banks under this section, as provided in sections 62-111 and 70-13. [L 1911, c 156, §1; RL 1925, §2180; RL 1935, §2317; am L 1935, c 67, §4; RL 1945, §6008; RL 1955, §138-13; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §46-48]

Note

Sections 62-111 and 70-13 referred to in text are repealed.

" **§46-49 Interest on deposits.** If any money deposited by the director of finance, under the provisions of section 46-48, belongs to the waterworks funds, then any interest received on the same shall be paid into and credited to the funds, and if any money so deposited belongs to a bond fund, then any interest received on the same shall be paid into and credited to the fund which provides for the payment of interest on bonds. [L 1927, c 194, §2; RL 1935, §2318; am L 1935, c 67, §5; RL 1945, §6010; RL 1955, §138-14; am L 1963, c 18, §1; HRS §46-49]

" **§46-50 Short term investment of county moneys.** The director of finance of each county may, with the approval of the legislative body, invest county moneys that are in excess of the amounts necessary for the meeting of immediate requirements when in the judgment of the legislative body the action will not impede or hamper the necessary financial operations of the county in:

(1) Bonds or interest-bearing notes or obligations:
    (A) Of the county;
    (B) Of the State;
    (C) Of the United States; or
    (D) Of agencies of the United States for which the full faith and credit of the United States are pledged for the payment of principal and interest;
(2) Federal land bank bonds;
(3) Joint stock farm loan bonds;
(4) Federal Home Loan Bank notes and bonds;
(5) Federal Home Loan Mortgage Corporation bonds;
(6) Federal National Mortgage Association notes and bonds;
(7) Securities of a mutual fund whose portfolio is limited to bonds or securities issued or guaranteed by the United States or an agency thereof;
(8) Repurchase agreements fully collateralized by any such bonds or securities;
(9) Bank savings accounts;

(10) Time certificates of deposit;
(11) Certificates of deposit open account;
(12) Bonds of any improvement district of any county of the State;
(13) Bank, savings and loan association, and financial services loan company repurchase agreements;
(14) Student loan resource securities including:
(A) Student loan auction rate securities;
(B) Student loan asset-backed notes;
(C) Student loan program revenue notes and bonds; and
(D) Securities issued pursuant to Rule 144A of the Securities Act of 1933, including any private placement issues;
issued with either bond insurance or overcollateralization guaranteed by the United States Department of Education; provided all insurers maintain a triple-A rating by Standard & Poor's, Moody's, Duff & Phelps, Fitch, or any other major national securities rating agency;
(15) Commercial paper with an A1/P1 or equivalent rating by any national securities rating service; and
(16) Bankers' acceptances with an A1/P1 or equivalent rating by any national securities rating service;

provided the investments are due to mature not more than five years from the date of investment. The income derived therefrom shall be deposited in the fund or funds that the legislative body shall direct; provided that if any money invested under this section belongs to any waterworks fund, then any income derived therefrom shall be paid into and credited to the fund. [L 1945, c 43, pt of §1; RL 1955, §138-15; am L 1965, c 40, §1; am L 1976, c 86, §1; HRS §46-50; am L 1998, c 297, §1; am L 2007, c 24, §1]

" **§46-51 Deposit of securities with mainland depositories.** The director of finance of each county may, with the approval of the council, deposit securities owned by the county in mainland depositories. The securities shall be subject to all the terms, conditions, and authorizations of the depository agreement which the director of finance may have or may make with any such mainland depository. Further, the director of finance of each county may, with the approval of the council, and with the consent of the state director of finance, place such securities under the control of the state director of finance for safekeeping in mainland depositories. The securities shall be subject to all the terms, conditions, and authorizations of any depository agreement which the state director of finance may have or make with any mainland depository, and all expenses

thereof shall be borne by the county. Moneys received by any mainland depository, on behalf of the county, or on behalf of the state director of finance for the county, from the sale or redemption of securities, or as interest, shall not for a period of thirty days after the receipt thereof by the depository be considered as deposits within the meaning of chapter 38, and moneys placed with the depositories for the purchase of securities shall not be considered as deposits within the meaning of chapter 38. [L 1945, c 43, pt of §1; RL 1955, §138-16; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §46-51]

" **§46-52 Deposit of securities.** The directors of finance of the several counties may deposit for safekeeping with the state director of finance securities deposited with them by the banks with whom they have deposits. The duly authorized representatives of any bank shall at all times during the office hours of the state director of finance have access to the security or securities belonging to the bank deposited with the state director of finance by the directors of finance of the several counties for the purpose of examining the same and removing such coupons as may have matured, the examination to be made in the presence of the state director of finance or the director's representative. [L 1935, c 25, §2; RL 1945, §6009; RL 1955, §138-17; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §46-52; gen ch 1985]

" **§46-53 Loans to the State.** When there are county moneys which in the judgment of the county director of finance are in excess of the amounts necessary for the immediate county requirements, the county director of finance may, with the approval of the director's council, make temporary loans therefrom to the State if in the director's judgment the action will not impede or hamper the necessary financial operations of the county. The loans to the State may be made without interest, or at such rates of interest, and upon such other terms and conditions, as may be agreed upon between the county director of finance, and the state director of finance and as may be approved by the council and the governor. The loans shall be made only upon the request of the state director of finance, approved by the governor, and they shall be repayable upon the demand of the county director of finance. [L 1945, c 133, §2; RL 1955, §138-18; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §46-53; gen ch 1985]

" **§46-54 Collection of delinquent license fees, taxes, and other amounts.** In addition to the penalty or forfeiture prescribed by law, an action for the recovery of any delinquent

license fees, taxes, or other amounts payable by law, may be brought by the director of finance of any county in the name of the county to which the license fee, tax, or other amount payable by law is due. [L 1943, c 175, §1; RL 1945, §6018; RL 1955, §138-19; HRS §46-54]

" **[§46-55 Schedule of council anticipated expenditures.]** Notwithstanding any law to the contrary, in any county where the population exceeds one hundred thousand, immediately following the enactment of the operating budget ordinance, the head of the legislative body of the county shall submit to the budget director of the county a schedule showing the expenditures of the body anticipated for each quarter of the fiscal year. The schedule shall not require the approval of nor can it be altered by the mayor and the legislative body may proceed without other authority to incur obligations or make expenditures after the schedule has been submitted. The director of finance shall approve or issue any requisition, purchase order, voucher, or warrant in accordance with the schedule and upon request of the legislative body. The schedule may be altered at any time by the body. [L 1970, c 207, §1]

" **§46-56 Purchasing.** The director of finance of each county that does not have any centralized purchasing provision in its charter, may adopt rules and regulations governing the procurement and purchase of materials, supplies, equipment, and services, subject to the requirements of chapter 103D. [L 1977, c 4, §1; am L Sp 1993, c 8, §54]

"PART IV. REAL AND PERSONAL PROPERTY

§46-61 Eminent domain; purposes for taking property. Each county shall have the following specific powers: To take private property for the purpose of establishing, laying out, extending and widening streets, avenues, boulevards, alleys, and other public highways and roads; for pumping stations, waterworks, reservoirs, wells, jails, police and fire stations, city halls, office and other public buildings, cemeteries, parks, playgrounds and public squares, public off-street parking facilities and accommodations, land from which to obtain earth, gravel, stones, and other material for the construction of roads and other public works and for rights-of-way for drains, sewers, pipe lines, aqueducts, and other conduits for distributing water to the public; for flood control; for reclamation of swamp lands; and other public uses within the purview of section 101-2 and also to take such excess over that needed for such public use or public improvement in cases where small remnants would

otherwise be left or where other justifiable cause necessitates the taking to protect and preserve the contemplated improvement or public policy demands, the taking in connection with the improvement, and to sell or lease the excess property with such restrictions as may be dictated by considerations of public policy in order to protect and preserve the improvement; provided that when the excess property is disposed of by any county it shall be first offered to the abutting owners for a reasonable length of time and at a reasonable price and if such owners fail to take the same then it may be sold at public auction. [L 1907, c 67, §1; am L 1913, c 97, §1; am L 1919, c 170, §1; RL 1925, §1952; RL 1935, §2300; am L 1937, c 184, §6; am L 1941, c 53, §1; am L 1943, c 153, §1; RL 1945, §6101; am L 1951, c 12, §5 and c 96, §1; RL 1955, §141-1; am imp L 1965, c 97, §1; HRS §46-61]

Law Journals and Reviews

Dolan v. City of Tigard: Individual Property Rights v. Land Management Systems. 17 UH L. Rev. 193.

Case Notes

In condemnation of land, proper party plaintiff is the Territory and not the superintendent of public works of the Territory. 20 H. 365.

This section, §46-62, and §101-2 neither limit counties' general power of eminent domain as set out in §46-1.5(6), nor divest counties of authority to enact ordinances allowing for condemnation of land for any particular public purpose. 76 H. 46, 868 P.2d 1193.

" **§46-62 Eminent domain; proceedings according to chapter 101.** The proceedings to be taken on behalf of the county for the condemnation of property as provided in section 46-61, shall be taken and had in accordance with chapter 101, as the same may be applicable. [L 1907, c 67, §4; RL 1925, §1953; RL 1935, §2301; RL 1945, §6102; am L 1951, c 12, §5(b); RL 1955, §141-2; HRS §46-62]

Case Notes

Section 46-61, this section, and §101-2 neither limit counties' general power of eminent domain as set out in §46-1.5(6), nor divest counties of authority to enact ordinances allowing for condemnation of land for any particular public purpose. 76 H. 46, 868 P.2d 1193.

" **§46-63 Gift or sale of county property for care of aged persons.** The several counties may give, sell, set aside, and transfer property, real or personal, to private eleemosynary organizations dedicated to the care of aged persons, so long as it is used for the care of aged persons. [L 1963, c 122, §1; Supp, §138-53; HRS §46-63]

" **§46-64 Disposition of surplus property.** Any other law to the contrary notwithstanding, any county may give, sell, or transfer any of its surplus personal property to the State or to any county within the State. [L 1965, c 251, §1; Supp, §138-54; HRS §46-64]

" **§46-65 Parks in the charge of council.** All public parks and public recreation grounds are transferred to and placed in the charge of the council of the county in which the same may be located, to be maintained, managed, and controlled by them. All lands set apart or acquired as public parks and public recreation grounds shall likewise be placed in the charge of and maintained by the several councils. This section shall not apply to parks and public recreational grounds in the city and county of Honolulu, or to the parks and parkways in the state park system. [L 1911, c 100, §1; am L 1913, c 132, §1; RL 1925, §1919; am L 1931, c 175, §1; RL 1935, §2368; RL 1945, §6138; am L 1949, c 185, §3; RL 1955, §142-24; HRS §46-65]

Cross References

Parks and playgrounds for subdivisions, see §46-6.

" **[§46-65.5] Exchange of park property.** The counties may accept from or transfer to the State, park lands, which may include related improvements, personnel, equipment, and functions. [L 1987, c 335, §3]

Note

Transfer of parks between State and counties. L 1988, c 7 repealing L 1984, c 34; L 1991, c 312.

Cross References

Aina Hoomalu, see §184-31.
State provisions, see §184-3.

" **[§46-65.6] Thomas Square; to be maintained.** Thomas Square shall be maintained as a public park. [L 1925, JR 1; RL 1935, §2369; RL 1945, §6139; RL 1955, §142-25; HRS §70-121; ren and am L 1988, c 263, pt of §8]

" **§46-65.7 Ala Wai golf course.** The fair commission of Hawaii is abolished and the functions and authority of the fair commission of Hawaii relating to the Ala Wai golf course are transferred to the city and county of Honolulu, together with the use and control of all lands, property, and facilities under its jurisdiction; provided that the lands, property, and facilities shall be used for the purposes of operating a municipal golf course; and provided further that the governor may by executive order transfer the use and control of the lands, property, and facilities or any part of the lands, property, and facilities to the appropriate department or agency of the State designated by the governor upon the giving of six months' written notice before the date of the transfer back to the State to the city and county of Honolulu. [L Sp 1959 2d, c 1, §29; Supp, §14A-28; HRS §70-122; ren and am L 1988, c 263, pt of §8; am L Sp 1993, c 7, §9]

" **§46-66 Disposition of real property.** Notwithstanding any other law to the contrary, each county, subject to the approval of the council, may grant, sell, or otherwise dispose of any easement for particular purposes in perpetuity by direct negotiation or otherwise, subject to reverter to the county upon the termination or abandonment of the specific purpose for which the easement was granted, including easements over, under, through, and across land bordering the ocean and easements for any governmental or public utility purpose or for chilled water and seawater distribution systems for renewable energy seawater air conditioning district cooling systems. [L 1970, c 176, §1; am L 2007, c 205, §4; am L 2011, c 46, §2]

"PART V. MISCELLANEOUS

§46-71 Service of process upon county. Service of any notice or process issued against any county by any court, judicial or administrative officer or board may be made by any officer authorized to make service of process, and may be made upon the corporation counsel or county attorney or any of the corporation counsel's or county attorney's deputies, or as provided by the county charter. Any such service shall be binding upon the county. [L 1911, c 11, §1; RL 1925, §2184; RL 1935, §2320; RL 1945, §6012; RL 1955, §138-20; HRS §46-71; am L 1973, c 134, §1; gen ch 1985]

Service upon county, see HRCP rule 4(d)(6).

" **§46-71.5 Indemnification of county agencies**. (a) To receive county aid, assistance, support, benefits, services, and interests in or rights to use county property, a state agency may agree in writing to an indemnity provision by which the State agrees to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when:

(1) The governor approves the State's proposed indemnification; and

(2) The comptroller, pursuant to section 41D-8.5, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision, or has determined that it is not in the best interest of the State to obtain insurance.

(b) Notwithstanding subsection (a), the governor may delegate to the superintendent of education or the deputy superintendent if so designated by the superintendent of education the authority to agree to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when:

(1) The use of the county property will be for a public school purpose or a public school function;

(2) The governor approves, in writing, the indemnity provision to be used by the superintendent of education or the deputy superintendent if so designated by the superintendent of education which provision, upon approval, may serve as approval under this paragraph for all public school purposes or functions on county properties for the remainder of that same school year; and

(3) The comptroller, pursuant to section 41D-8.5, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision, or has determined that it is not in the best interest of the State to obtain insurance.

(c) An indemnity provision not in strict compliance with this section shall not give rise to a claim against the State under chapter 661 or otherwise waive the State's sovereign immunity. [L 2007, c 152, §10; am L 2010, c 145, §2]

" **§46-72 Liability for injuries or damages; notice.** Before the county shall be liable for damages to any person for injuries to person or property received upon any of the streets, avenues, alleys, sidewalks, or other public places of the county, or on account of any negligence of any official or employee of the county, the person injured, or the owner or person entitled to the possession, occupation, or use of the property injured, or someone on the person's behalf, within two years after the injuries accrued shall give the individual identified in the respective county's charter, or if none is specified, the chairperson of the council of the county or the clerk of the county in which the injuries occurred, notice in writing of the injuries and the specific damages resulting, stating fully when, where, and how the injuries or damage occurred, the extent of the injuries or damages, and the amount claimed. [L 1943, c 181, §1; RL 1945, §6013; RL 1955, §138-21; HRS §46-72; am L 1998, c 124, §1; am L 2007, c 152, §8]

Cross References

Use, repair, and maintenance of public roads in ownership dispute, see §46-15.9.

Law Journals and Reviews

The Requirement for Notice of Claim Against the City and County of Honolulu: Does it Apply to a Claim for Contribution Under the Uniform Contribution Among Tortfeasors Act? 3 HBJ, May 1965, at 4.

Case Notes

Presentation of claim against county within six month limit was not condition precedent to maintaining third party action against county for contribution under Contribution Among Tortfeasors Act. 283 F. Supp. 854.

This is a statute of limitations and is to be narrowly construed. 283 F. Supp. 854.

Plaintiff's [chapters] 368 and 378 state law claims against the county were time-barred under this section, where plaintiff never provided the county written notice of plaintiff's claim. 504 F. Supp. 2d 969.

Sufficiency of notice of claim discussed. 54 H. 210, 505 P.2d 1182.

Notice of claim requirement is inconsistent with §662-4 and is invalid. 55 H. 216, 517 P.2d 51; 56 H. 135, 531 P.2d 648.

Because the city is neither the sovereign nor the surrogate or alter ego of the sovereign, it is not entitled to sovereign immunity; thus, it is subject to the State's tort laws in the same manner as any private tortfeasor; as §657-13 governs classes of "personal" tort actions, such as "damage to persons or property", the infancy tolling provision of §657-13(1) applies directly to personal injury actions against the city; child was thus able to bring action, but as §657-13(1) did not provide for tolling of parents' derivative actions and they did not timely comply with this section, their individual claims were barred. 104 H. 341, 90 P.3d 233.

Counties do not fall within the ambit of the State Tort Liability Act, chapter 662; this section is the statute of limitations applicable to actions against the counties. 104 H. 341, 90 P.3d 233.

The limitation period set forth in this section is not tolled pending the appointment of a personal representative. 115 H. 1, 165 P.3d 247.

The statute of limitations applicable to the estate's claims arising out of decedent's injuries and the plaintiff's own derivative wrongful death damages was this section; this section applies to claims against counties arising from fatal injuries. 115 H. 1, 165 P.3d 247.

Where this section (2006) created a class of tort claimants, injured by the conduct of a county, who were subject to a six-month statute of limitations period for filing their complaint, and victims of injuries caused by the State under §662-4 had a two-year limitation period, and there was no rational basis to support such disparate treatment, this section (2006) was unconstitutional under article I, §5 of the Hawaii constitution. 115 H. 1, 165 P.3d 247.

" **[§46-72.5] Counties' limited liability for skateboard activities at public skateboard parks.** (a) No public entity or public employee shall be liable to any person for injury or damage sustained when using a public skateboard park, except when injury or damage is caused by a condition resulting from the public entity's failure to maintain or repair the skateboard park.

(b) Counties shall maintain a record of all known or reported injuries incurred by skateboard users in a public skateboard park and all claims paid for such injuries and shall submit a report to the legislature on or before twenty days before the convening of the 2008 legislative session, along with any recommendations regarding the need for further immunity from liability. [L 2003, c 144, §2]

" **§46-73 Claims for legislative relief; conditions.** All claims for refunds, reimbursements, or other payments by any county, authorization for which is sought from the legislature, shall, as a condition to their being considered by the legislature, be filed in duplicate with the county council or city council of the county concerned at least thirty days prior to the convening of the legislature, together with duplicates of all data and documents in support thereof. In the absence of a showing of sufficient reason therefor, failure to comply with this paragraph shall be deemed sufficient cause for refusal of the legislature to consider the claims.

The county council or city council shall immediately upon receipt thereof refer the claim and data so received by it to the head of the department, bureau, board or commission concerned, and the person to whom the reference is made shall immediately investigate the claim, secure in duplicate all available data and documents bearing thereon, and prior to the convening of the legislature refer the same back to the county council or city council with the person's recommendations thereon. The county councils or city council shall, within five days after the opening of the session, transmit the claims which have not been paid by the county concerned in an appropriate legislative bill form, together with all accompanying data so presented, to the legislature. [L 1943, c 75, §1; RL 1945, §6015; RL 1955, §138-22; HRS §46-73; am L 1973, c 178, §3; gen ch 1985]

" **§46-74 [Waiver of exemption from assessment for improvements.]** Notwithstanding sections 67-8 and 46-74.2 or any other law to the contrary, any society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes whose land is exempt by law from assessment for improvements, may file or join others in filing a petition for an improvement district and shall, by such filing or joining to file, be deemed to have waived exemption from assessment for improvements and its lands within the improvement district shall be assessed for improvements without contribution from the county or the State. [L 1967, c 35, §1; HRS §46-74]

Note

Section 67-8 referred to in text is repealed.

Revision Note

Section "46-74.2" substituted for "70-111".

" **[§46-74.1 Exemption from improvement assessments.]** Subject to sections 67-8 and 46-74.2, any land exempted by law from payment of property taxes which land is owned by a society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes, whose charter or other enabling act contains a provision that, in the event of dissolution, the land owned by such society, association, or corporation shall be distributed to another society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes shall be exempt from assessments to pay for the cost of any improvements included in any improvement district. [L 1968, c 65, §2]

Note

Section 67-8 referred to in text is repealed.

Revision Note

Section "46-74.2" substituted for "70-111".

" **[§46-74.2] Public land or land exempt from taxation, etc.; cost otherwise assessable against borne by city and county.** Whenever (1) any public land, except lands owned by the board of water supply, or (2) any land by law exempted from improvement assessments, or (3) any land exempted by law from payment of property taxes which land is owned by a society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes, whose charter or other enabling act contains a provision that, in the event of dissolution, the land owned by such society, association, or corporation and herein exempted from assessments shall be distributed to another society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes, forms part of any improvement district or fronts upon any street, alley, or other highway to be opened or improved or along which a storm drainage system or street lighting system is to be constructed or improved independently and would, if privately owned or not exempt from such assessment, be subject to assessment, the city council shall, nevertheless, without assessing such public or exempted land for any part of the cost of such improvements, by general ordinance appropriate and pay toward such improvements out of general revenues the portion of the cost thereof which would otherwise be assessable against the same in a lump sum or,

at the election of the council, in such equal installments and with such interest thereon as the council shall determine. In the event, however, any part or parts of such exempt lands as described in the preceding sentence, except public lands, may be required for right-of-way or easement purposes within such improvement districts the value thereof shall be chargeable to the improvement district, and upon acquisition the owner shall be compensated therefor in the following manner:

(1) Where the value of the part taken together with any severance damages exceeds the portion of the cost of the improvements which would otherwise be assessable against the exempt land, the county shall pay the difference to the owner or owners;

(2) Where the value is less than the portion of the cost of improvements which would otherwise be assessable against such exempt lands, the value of the land shall be deducted therefrom and the county shall pay the balance of the assessment as provided herein.

With respect to any proposed improvement where any part of the cost is thus to be borne by the city and county, the council shall have the same right of approval or protest as though the city and county were the private owner of the public or exempted land so involved. As to such expenditures for public and exempt lands, the city and county shall be entitled to be reimbursed out of state revenues by appropriations to be made from time to time by the legislature to the extent of fifty per cent of all assessments regularly apportioned against persons, corporations, or entities, which are part of any improvement district or frontage improvement and are exempted by law from the payment of such assessments. The city and county shall be entitled to be likewise reimbursed for the full amount of assessments regularly apportioned against public lands which are a part of any improvement district or frontage improvement, which public lands are owned in fee simple by the United States, or by the State, and which are not set aside for city and county parks, or for other city and county purposes or for street areas or frontages; provided that as to the University of Hawaii, Kapiolani park, including the Waikiki parks established by the laws of 1905, chapter 103, section 1, the city and county shall be entitled to full reimbursement for improvement assessments; and provided further that in case any land exempted by law from assessments as herein provided, other than public land, or any part thereof, is sold or leased after the establishment of a frontage improvement or an improvement district, the grantee, in the one case and the lessor in the other, shall assume the payment of assessments from the date of such sale or lease in the same manner as if the property had not been exempted from assessments

and as if assessments proportionable against the property had been paid in installments to such date of sale or lease; and that all payments received from such grantee or lessor, as the case may be, shall be paid into the permanent improvement fund. Nothing in this section shall be taken to prejudice any rights of the State to reimbursement from the United States for assessments herein assumed by the State, but the latter shall be subrogated to the rights of the city and county on such assessments so assumed. [L 1919, c 241, pt of §2; RL 1925, §1852; am L 1925, c 191, §2; am L 1929, c 110, §1; am L 1932 2d, c 69, §1; RL 1935, §3183; RL 1945, §6704; am L 1949, c 267, §1(3); am L 1953, c 263, §1(2); RL 1955, §153-3; am L 1957, c 240, §2(2) and c 248, §1; am imp L 1965, c 97, §1; am L 1965, c 228, §1; HRS §70-111; ren L 1988, c 263, §7]

Cross References

Waiver of exemption, see §46-74.

" **§46-75 Improvement bonds exempt from taxation.** All bonds issued by any of the counties of the State for improvements by assessments, and the interest thereon, shall be exempt from all state, county, and municipal taxation, except inheritance, transfer, and estate taxes. [L 1963, c 128, §1; Supp, §138-71; HRS §46-75]

" **§46-76 Location of utility facilities in improvement districts.** Notwithstanding any provision of law to the contrary, whenever any public improvement is established, constructed, improved, or altered pursuant to the improvement by assessment statutes or ordinances, and in conjunction therewith it is necessary to provide for the installation or require the removal, relocation, replacement, or reconstruction of public utility facilities that are privately owned, the respective legislative bodies of the counties shall determine whether the whole or a portion of such utility facilities shall be located overhead or underground. Where it is decided that the whole or a portion of the utility facilities shall be relocated, replaced or reconstructed, which installation shall constitute a public improvement, the respective legislative bodies of the counties shall determine what portion of the costs of the installation or the removal, relocation, replacement, or reconstruction of the utility facilities required shall be borne by the utility companies, counties and the properties specially benefited within the improvement district; provided that such costs borne by the counties and the utility companies shall be paid in a lump sum, that the portion of the costs to be borne by the

utility companies shall be the same percentage of the total relocation cost for each utility company required to remove, relocate, replace or reconstruct its facilities within the improvement district and the costs that are allocated against the properties specially benefited in the improvement district shall be assessed and paid for in accordance with the provisions of the improvement by assessment statutes or ordinances; provided further that the counties may issue bonds under any applicable laws to pay their share of such costs and the costs allocated against the properties specially benefited may be financed under any applicable laws as are other special assessments against specially benefited property.

The foregoing provisions shall not be applicable to the subdivision of lands which require the installation of utility facilities in new streets established by the subdivision and which subdivision is initiated, created or made by a private developer. [L 1968, c 73, §3; am L 1985, c 201, §1]

" **[§46-77 Underground utility facilities in improvement districts.]** Notwithstanding the provision of any statute or ordinance or any regulation made under authority thereof, whenever the legislative body of a county shall determine that the whole or a portion of public utility facilities that are privately owned shall be located underground within an improvement district established pursuant to improvement by assessment statutes or ordinances, the utility engineering, placing of cables and splicing work shall be performed by the public utility concerned notwithstanding that a portion of the cost of the installation of such utility facilities underground may be borne by the county within which such improvement district is situated or the properties specially benefited within such improvement district or both. [L 1969, c 256, §1]

" **[§46-78] Improvement districts, initiation by the State.** Notwithstanding any provision of law to the contrary, the respective legislative bodies of the counties may, upon the petition of the state department of transportation, create, define and establish improvement districts according to applicable assessment statutes or ordinances, for any betterment or improvement proposed by the state department of transportation. The petition of the department of transportation shall include the necessary surveys, maps, plans and other data for the betterment or improvement. Upon approval of the petition by the legislative body of the county, the county shall proceed in the same manner as though the plan for the proposed construction or improvement had been initiated by the legislative body of the county on its own motion, provided

that the county may abandon the proceedings prior to adoption of the resolution creating the improvement district.

The provisions of the assessment statutes or ordinances shall be applicable to the proposed construction or improvement insofar as practicable, provided that the costs thereof shall be assessed against the land specially benefited either on a frontage basis, according to area of the land within the improvement district, or on the basis of assessed valuation for real property tax purposes, or any combination thereof.

The state department of transportation shall assume, except for the cost to be borne by the board of water supply of the county, the cost of construction or improvement which would have been assumed by the county had the project been initiated by the county, including the costs and incidentals necessary to process the project, and the costs allocable to state land and land exempted by the improvement district statutes from the payment of improvement assessments; provided that where lands owned by the county, including the board of water supply of the county, form part of the improvement district, the county or the board of water supply of the county, whichever is applicable, shall pay the costs allocable to such lands. Nothing contained herein however, shall be construed to prohibit any county from participating in the costs of an improvement district which is initiated upon petition by the department of transportation.

Upon filing the petition for the creation of an improvement district, the department of transportation shall deposit with the county an amount adequate to cover the administrative costs of the county. In addition, the department of transportation shall from time to time upon request of the county deposit the necessary sums to cover the costs of acquiring land required for the project. Upon award of any contract, either for the entire project or separately for the different kinds of work to be performed, the department of transportation shall deposit with the county the amount the State is obliged to pay towards the contract price; provided that if the completion of the contract will extend beyond the fiscal year in which the contract is executed, the department of transportation may deposit with the county, if the contract is to be completed during the next succeeding fiscal year, at least fifty per cent or, if the contract by its terms will not be completed until beyond the next succeeding fiscal year, at least thirty-three and one third per cent of the amount the State is obliged to pay toward the contract price. [L 1972, c 201, §1]

" **[§46-79] CUSIP numbers for district improvement bonds or improvement district bonds of counties.** Unless the governing body shall otherwise direct, the director of finance of any

county issuing district improvement bonds or improvement district bonds of such county pursuant to either state statutes or charter or ordinances adopted under either thereof in the director's discretion may provide that CUSIP identification numbers shall be imprinted on such bonds. In the event such numbers are imprinted on any such bonds (i) no such number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted and (ii) no liability shall attach to the county, such district or any officer or agent of either thereof, including any fiscal agent, paying agent or registrar for such bonds, by reason of such numbers or any use made thereof, including any use thereof made by the county, such district, any such officer or any such agent, or by reason of inaccuracy, error or omission with respect thereto or in such use. Unless the governing body shall otherwise direct, the director of finance in the director's discretion may require that all cost of obtaining and imprinting such numbers shall be paid by the purchaser of such bonds. For the purposes of this section, the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association. [L 1974, c 109, §3; gen ch 1985]

" **§46-80 Improvement by assessment; financing.** Any county having a charter may enact an ordinance, and may amend the same from time to time, providing for the making and financing of improvement districts in the county, and such improvements may be made and financed under such ordinance. The county may issue and sell bonds to provide funds for such improvements. Bonds issued to provide funds for such improvements may be either bonds when the only security therefor is the properties benefited or improved or the assessments thereon or bonds payable from taxes or secured by the taxing power of the county. If the bonds are secured only by the properties benefited or improved or the assessments thereon, the bonds shall be issued according and subject to the provisions of the ordinance. If the bonds are payable from taxes or secured by the taxing power, the bonds shall be issued according and subject to chapter 47. Except as is otherwise provided in section 46-80.1, in assessing land for improvements a county shall assess the land within an improvement district according to the special benefits conferred upon the land by the special improvement; these methods include assessment on a frontage basis or according to the area of land within an improvement district, or any other assessment method which assesses the land according to the special benefit conferred, or any combination thereof. [L 1976, c 105, §1; am L 1978, c 180, §1(2); am L 1992, c 226, §3]

Law Journals and Reviews

Improvements by Assessment in Hawaii. 14 HBJ 139.

" **§46-80.1 Community facilities district.** (a) Any county having a charter may enact an ordinance, and may amend the same from time to time, providing for the creation of community facilities districts to finance special improvements in the county. The special improvements may be provided and financed under the ordinance. The county shall have the power to levy and assess a special tax on property located in a district to finance the special improvements and to pay the debt service on any bonds issued to finance the special improvements. The county may issue and sell bonds to provide funds for the special improvements, or, if requested by the county, the State may issue and sell revenue bonds under section 201H-72. Bonds issued to provide funds for the special improvements may be either: bonds secured only by the properties included in the district and/or the special taxes thereon, or bonds payable from general taxes and/or secured by the general taxing power of the county. If the bonds are secured only by the properties included in the district and/or the special taxes thereon, the bonds shall be issued according and subject to the provisions of the ordinance. If the bonds are payable from general taxes or secured by the general taxing power, the bonds shall be issued according and subject to chapter 47.

(b) There is no requirement that the special tax imposed by ordinance pursuant to this section be fixed in an amount or apportioned on the basis of special benefit to be conveyed on property by the special improvement, or that the special improvement convey a special benefit on any property in the district. It shall be sufficient that the governing body of the county determines that the property to be subject to the special tax is improved or benefited by the special improvement in a general manner or in any other manner. The special improvement may also benefit property outside the district. The special taxes assessed pursuant to this section shall be a lien upon the property assessed. The lien shall have priority over all other liens except the lien of general real property taxes and the lien of assessments levied under section 46-80. The lien of special taxes assessed pursuant to this section shall be on a parity with the lien of general real property taxes and the lien of assessments levied under section 46-80, except to the extent the law or assessment ordinance provides that the lien of assessments levied under section 46-80 shall be subordinate to the lien of general real property taxes.

(c) The ordinance shall describe the types of special improvements that may be undertaken and financed. In addition, the ordinance shall include, but not be limited to, procedures for:

(1) Creating community facilities districts (and zones therein), including specific time spans for the existence of each district;

(2) Apportioning special taxes on real properties within a community facilities district;

(3) Providing notice to and opportunity to be heard by owners of property proposed to be subject to the special tax (the affected owners), subject to waiver by one hundred per cent of the affected owners, including termination of proceedings if the affected owners of more than fifty-five per cent of the property, or if more than fifty-five per cent of the affected owners of the property, in the community facilities district proposed to be subject to the special tax protest in writing at the hearing. The ordinance shall also provide that if a lease requires the lessee to pay the proposed special tax, the ordinance shall state that the affected owner may waive this requirement in writing and that the affected owner refrain from imposing upon any successor lessee the obligation to pay the special tax. The ordinance shall also provide that if the affected owner fails to waive the requirement that the lessee pay the proposed tax, then all the rights for notice, hearing, and protest contained in this paragraph shall inure to the benefit of the original lessee or any subsequent lessee;

(4) Provide notice to buyers or lessees of the property who would be required to pay the special tax;

(5) Fixing, levying, collecting, and enforcing the special taxes against the properties affected thereby (including penalties for delinquent payment and sales for default);

(6) Making changes in the community facilities district, in the special taxes, or in the special improvements to be financed or provided;

(7) The acquisition or construction of the special improvements;

(8) The issuance of bonds to pay all or part of the cost of the special improvements (including costs of issuance, reserves, capitalized interest, credit enhancement, and any other related expenses);

(9) Refunding bonds previously issued;

(10) The establishment and handling of a separate special fund or funds to pay or secure such bonds or to pay for acquisition or construction of special improvements or any other related expenses; and

(11) Other matters as the council shall determine to be necessary or proper.

The amount of special taxes may include amounts determined by the council to be necessary or reasonable to cover administration and collection of the assessments, administration of the bonds or of the program authorized by this section, replenishment of reserves, arbitrage rebate, and a reasonable financing fee.

(d) Each issue of bonds shall be authorized by ordinance, separate from the foregoing procedural ordinance, and shall be in such amounts, denominations, forms, executed in such manner, payable at such place or places, at such time or times, at such interest rate or rates (either fixed or variable), with such maturity date or dates and terms of redemption, security (including pledge of proceeds, special taxes and liens therefor), credit enhancement, administration, investment of proceeds and special tax receipts, default, remedy, or other terms and conditions as the council deems necessary or convenient. The bonds shall be sold in the manner and at the price or prices determined by the council.

(e) This section is a special improvement statute which implements section 12 of article VII of the state constitution and provides a complete, additional, and alternative method of doing the things authorized herein; and the creation of districts, levying, assessments and collection of special taxes, issuance of bonds and other matters covered by this section, or by the procedural or bond ordinances authorized by this section, need not comply with any other law applicable to these matters. Bonds issued under this section, when the only security for such bonds is the special taxes or liens on the property in the district subject thereto, shall be excluded from any determination of the power of a county to issue general obligation bonds or funded debt for purposes of section 13 of article VII of the state constitution.

(f) Notwithstanding any other law, no action or proceeding to question the validity of or enjoining any ordinance, action, or proceeding undertaken pursuant hereto (including the determination of the amount of any special tax levied with respect to any property or the levy or assessment thereof), or any bonds issued or to be issued pursuant thereto or under this section, shall be maintained unless begun within thirty days of the adoption of the ordinance, determination, levy, assessment or other act, as the case may be, and, in the case of bonds,

within thirty days after adoption of the ordinance authorizing the issuance of those bonds.

(g) Bonds issued pursuant to this section and the interest thereon and other income therefrom shall be exempt from any and all taxation by the State or any county or other political subdivision thereof, except inheritance, transfer, and estate taxes.

(h) Properties of entities of the state, federal, or county governments, except as provided in subsection (i), shall be exempt from the special tax. No other properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the ordinance of formation to establish a district adopted pursuant to this chapter or in an ordinance of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax as provided in this section.

(i) If a public body owning property, including property held in trust for any beneficiary, which is exempt from a special tax pursuant to subsection (h), grants leasehold or other possessory interest in the property to a nonexempt person or entity, the special tax, notwithstanding subsection (h), shall be levied on the leasehold or possessory interest and shall be payable by the lessee. [L 1992, c 226, §2; am L 2015, c 156, §1]

" **§46-80.5 Special improvement district.** (a) In addition and supplemental to the authority vested in the counties by sections 46-80 and 46-80.1, any county having a charter may enact an ordinance, and may amend the same from time to time, authorizing the creation of special improvement districts for the purpose of providing and financing supplemental maintenance and security services and such other improvements, services, and facilities within the special improvement district as the council of the county determines will restore or promote business activity in the special improvement district and making and financing improvements therein. Each separate special improvement district shall be established by a separate ordinance enacted as provided in the ordinance authorizing the creation of special improvement districts. The ordinance authorizing the creation of special improvement districts may permit the county to provide for a board or association, established pursuant to chapter 414D, to provide management of the special improvement district, and to carry out activities as may be prescribed by the ordinance authorizing the creation of special improvement districts and the ordinance establishing the special improvement district as permitted thereby.

(b) The county may levy and assess a special assessment on property located within the special improvement district to finance the maintenance and operation of the special improvement district and to pay the debt service on any bonds issued to finance improvements within the special improvement district. Notwithstanding any law to the contrary, in assessing property for a special assessment, the county may implement a methodology as the council of the county deems appropriate. The special assessment may be fixed in an amount or appropriated on a basis as the council of the county deems appropriate, and it shall not be essential that the property subject to the special assessment be improved or benefitted by the operation and maintenance of the special improvement district or any activity or improvement undertaken for, and financed by, the special improvement district.

(c) The county may issue and sell bonds to finance improvements within the special improvement district and the ordinance authorizing the creation of special improvement districts may provide the method, procedure, and type or types of security for those bonds. Each issue or series of bonds shall be authorized by ordinance separate from the ordinance establishing the special improvement district. The bonds shall be in amounts, in denomination or denominations, in form or forms, executed in a manner, payable in place or places and at time or times, bear interest at rate or rates (either fixed or variable), mature on date or dates and provide terms and conditions of redemption, provide security (including the pledge of proceeds of the bonds, special assessments, and the lien therefor), provide for credit enhancement, if any, administration, terms of investment of proceeds of the bonds and special assessment receipts, provide terms of default and remedy, and other terms and conditions, as the council of the county deems necessary or proper. The bonds may be sold in a manner and at price or prices as the council of the county shall determine. Bonds issued pursuant to this section and the interest thereon and other income therefrom shall be exempt from any and all taxation by the State or any county or other political subdivision, except inheritance, transfer, and estate taxes.

(d) Notwithstanding any other law to the contrary, no action or proceeding to object to or question the validity of or enjoining any ordinance, action, or proceeding permitted by this section (including the liability for or the determination of the amount of any special assessment levied or the imposition thereof), or any bonds issued or to be issued pursuant to an ordinance enacted as permitted by this section, shall be maintained unless begun within thirty days of the enactment of

the ordinance, determination, or other act, as the case may be and, in the case of the assessment, whether the determination or levy, within thirty days after adoption of the ordinance authorizing or amending the assessment formula and, in the case of bonds, within thirty days after enactment of the ordinance authorizing the issuance of the bonds.

(e) Exemptions.

(1) Property owned by the state or county governments or entities, may be exempt from the assessment except as provided in paragraph (3);

(2) Property owned by the federal government or entities, shall be exempt from the assessment except as provided in paragraph (3);

(3) If a public body owning property, including property held in trust for any beneficiary, which is exempt from an assessment pursuant to paragraphs (1) and (2), grants a leasehold or other possessory interest in the property to a nonexempt person or entity, the assessment, notwithstanding paragraphs (1) and (2), shall be levied on the leasehold or possessory interest and shall be payable by the lessee;

(4) The redevelopment of the Ala Wai boat harbor shall be exempt from the assessment and any special improvement district requirements authorized by subsection (a); and

(5) No other properties or owners shall be exempt from the assessment unless the properties or owners are expressly exempted in the ordinance establishing a district adopted pursuant to this section or amending the rate or method of assessment of an existing district.

(f) The assessments levied pursuant to the ordinance authorizing the creation of special improvement districts, the ordinance establishing a district, and this section shall be a lien upon the property assessed. The lien shall have priority over all other liens except the lien of general real property taxes and shall be on a parity with the lien of assessments levied under sections 46-80 and 46-80.1.

(g) Any board or association established for the purposes of carrying out the activities described in this section shall not be deemed a governmental body. The board and association shall neither be deemed to be a government department, agency, or a county nor to be performing services on behalf of a government department, agency, or county. [L 1999, c 107, §1; am L 2002, c 40, §2; am L 2011, c 197, §3]

" **[§46-81] Reserve funds for payment of improvements.** Any other law to the contrary notwithstanding, no county with a population of less than 100,000 persons shall impose or collect any ad valorem assessment to establish, maintain, or replenish a reserve fund. As used in this section, "reserve fund" means any fund established by a county to provide security, in addition to any special fund made up of moneys collected on account of assessments and interest for improvements, for the payment of principal and interest on bonds issued for such improvements where moneys in the special fund are insufficient for this purpose. The provisions of this section shall not prevent any county from imposing or collecting an ad valorem assessment to establish, maintain, or replenish a reserve fund for an improvement by assessment district in existence on June 2, 1978. [L 1978, c 180, §1(1)]

Revision Note

"June 2, 1978" substituted for "the effective date of this section".

" **[§46-85] Contracts for solid waste disposal.** Any other law to the contrary notwithstanding, a county is authorized from time to time to contract with users or operators of a project for the abatement, control, reduction, treatment, elimination, or disposal of solid waste, whether established or to be established under chapter 48E or as a public undertaking, improvement, or system under chapter 47 or 49, or otherwise. The contract may be included in an agreement, may be for such periods as agreed upon by the parties, and, without limiting the generality of the foregoing, may include:

(1) Provisions for the delivery to the project of minimum amounts of solid waste and payments for the use of the project based on the delivery of the minimum amounts (which payments the political subdivision may be obligated to make, whether or not such minimum amounts are actually delivered to the project);
(2) Unit prices, which may be graduated; and
(3) Adjustments of the minimum amounts and the unit prices.

The payments, unit prices, or adjustments need not be specifically stated in the contract but may be determined by formula if set forth in the contract. The contract may include provisions for arbitration and reasonable restrictions against other disposal by the county or by other public or private entities or persons over which the county shall have jurisdiction of the substances covered by the contract while the

contract is in force and disposal under the contract is practicable. [L 1983, c 237, pt of §3]

Attorney General Opinions

The supreme court in Konno v. County of Hawaii rejected the county's §76-77(10) argument not because this section made no reference to civil service laws but because the court was not convinced that this section's authorization to contract applied to both garbage-to-energy plants and landfills. Att. Gen. Op. 97-6.

Case Notes

Landfill worker positions were within civil service where position not specifically exempted by another statute as provided by §76-77(10) and this section mentions nothing about civil service nor does it include a specific exemption. 85 H. 61, 937 P.2d 397.

" **[§46-86] Transactions for utility services.** Any other law to the contrary notwithstanding, the disposal of solid waste by a county or project party is a utility service, but shall not place the county or project party in any way under the jurisdiction of the public utilities commission; provided that in the case of a project party, the project party shall not provide any utility services other than the disposal of solid waste or the sales of goods or commodities, including electric energy, produced by the operation of the pollution control project where such sales are made only to registered public utilities, industrial or commercial concerns, or counties or county agencies and not to the general public. If the project party is also a registered public utility, nothing contained in this section shall prohibit the sale of electric energy to the general public. [L 1983, c 237, pt of §3]

" **[§46-87] Liquidated damages.** Any other law to the contrary notwithstanding, a contract for the provision of utility services, goods, or commodities, including water or electrical energy, by a county or by a project party, may provide for the payment of liquidated damages by a purchaser or by the project party; provided that such liquidated damages provision shall be deemed reasonable and shall be enforceable if measured and established by reference to the proportionate relationship of the payments owed by the party subject to the liquidated damages provision to the total costs of the pollution control project, the cost of maintenance, operation, and repair

thereof, and to the total operating capacity thereof. [L 1983, c 237, pt of §3]

" **§46-88 Agricultural buildings and structures; exemptions from building permit and building code requirements.** (a) Notwithstanding any law to the contrary, the following agricultural buildings, structures, and appurtenances thereto that are not used as dwellings or lodging units are exempt from building permit and building code requirements where they are no more than one thousand square feet in floor area:

(1) Nonresidential manufactured pre-engineered commercial buildings and structures;

(2) Single stand alone recycled ocean shipping or cargo containers that are used as nonresidential commercial buildings and are properly anchored;

(3) Notwithstanding the one thousand square foot floor area restriction, agricultural shade cloth structures, cold frames, or greenhouses not exceeding twenty thousand square feet in area per structure; provided that where multiple structures are erected, the minimum horizontal separation between each shade cloth structure, cold frame, or greenhouse is fifteen feet;

(4) Aquacultural or aquaponics structures, including above-ground water storage or production tanks, troughs, and raceways with a maximum height of six feet above grade, and in-ground ponds and raceways, and piping systems for aeration, carbon dioxide, or fertilizer or crop protection chemical supplies within agricultural or aquacultural production facilities;

(5) Livestock watering tanks, water piping and plumbing not connected to a source of potable water, or separated by an air gap from such a source;

(6) Non-masonry fences not exceeding ten feet in height and masonry fences not exceeding six feet in height;

(7) One-story masonry or wood-framed buildings or structures with a structural span of less than twenty-five feet and a total square footage of no more than one thousand square feet, including farm buildings used as:

(A) Barns;

(B) Greenhouses;

(C) Farm production buildings including aquaculture hatcheries and plant nurseries;

(D) Storage buildings for farm equipment or plant or animal supplies or feed; or

(E) Storage or processing buildings for crops; provided that the height of any stored items

shall not collectively exceed twelve feet in height;

(8) Raised beds containing soil, gravel, cinders, or other growing media or substrates with wood, metal, or masonry walls or supports with a maximum height of four feet;

(9) Horticultural tables or benches no more than four feet in height supporting potted plants or other crops; and

(10) Nonresidential indigenous Hawaiian hale that do not exceed five hundred square feet in size, have no kitchen or bathroom, and are used for traditional agricultural activities or education;

provided that the buildings, structures, and appurtenances thereto comply with all applicable state and county zoning codes.

(b) Notwithstanding the one thousand square foot floor area restriction in subsection (a), the following buildings, structures, and appurtenances thereto shall be exempt from building permit requirements when compliant with relevant building codes or county, national, or international prescriptive construction standards:

(1) Nonresidential manufactured pre-engineered and county pre-approved commercial buildings and structures consisting of a total square footage greater than one thousand square feet but no more than eight thousand square feet; and

(2) One-story wood-framed or masonry buildings or structures with a structural span of less than twenty-five feet and a total square footage greater than one thousand square feet but no more than eight thousand square feet constructed in accordance with county, national, or international prescriptive construction standards, including buildings used as:

(A) Barns;

(B) Greenhouses;

(C) Farm production buildings, including aquaculture hatcheries and plant nurseries;

(D) Storage buildings for farm equipment, plant or animal supplies, or feed; or

(E) Storage or processing buildings for crops;

provided that the height of any stored items shall not collectively exceed twelve feet in height.

(c) The exemptions in subsections (a) and (b) shall apply; provided that:

(1) The aggregate floor area of the exempted agricultural buildings shall not exceed:

(A) Five thousand square feet per zoning lot for lots of two acres or less;
(B) Eight thousand square feet per zoning lot for lots greater than two acres but not more than five acres; and
(C) Eight thousand square feet plus two per cent of the acreage per zoning lot for lots greater than five acres; provided that each exempted agricultural building is compliant with the square foot area restrictions in subsection (a) or subsection (b);

(2) The minimum horizontal separation between each agricultural building, structure, or appurtenance thereto is fifteen feet;

(3) The agricultural buildings, structures, or appurtenances thereto are located on a commercial farm or ranch and are used for general agricultural or aquacultural operations, or for purposes incidental to such operations;

(4) The agricultural buildings, structures, or appurtenances thereto are constructed or installed on property that is used primarily for agricultural or aquacultural operations, and is two or more contiguous acres in area or one or more contiguous acres in area if located in a nonresidential agricultural or aquacultural park;

(5) Upon completion of construction or installation, the owner or occupier shall provide written notice to the appropriate county fire department and county building permitting agency of the size, type, and locations of the building, structure, or appurtenance thereto. Such written notification shall be provided to the county agencies within thirty days of the completion of the building, structure, or appurtenance thereto. Failure to provide such written notice may void the building permit or building code exemption, or both, which voidance for such failure is subject to the sole discretion of the appropriate county building permitting agency;

(6) No electrical power and no plumbing systems shall be connected to the building or structure without first obtaining the appropriate county electrical or plumbing permit, and all such installations shall be installed under the supervision of a licensed electrician or plumber, as appropriate, and inspected and approved by an appropriate county or licensed inspector or, if a county building agency is unable to

issue an electrical permit because the building or structure is permit-exempt, an electrical permit shall be issued for an electrical connection to a meter on a pole beyond the permit-exempt structure in accordance with the installation, inspection, and approval requirements in this paragraph;

(7) Disposal of wastewater from any building or structure constructed or installed pursuant to this section shall comply with chapter 342D; and

(8) Permit-exempt structures shall be exempt from any certificate of occupancy requirements.

(d) As used in this section:

"Agricultural building" means a nonresidential building or structure, built for agricultural or aquacultural purposes, located on a commercial farm or ranch constructed or installed to house farm or ranch implements, agricultural or aquacultural feeds or supplies, livestock, poultry, or other agricultural or aquacultural products, used in or necessary for the operation of the farm or ranch, or for the processing and selling of farm or ranch products.

"Agricultural operation" means the planting, cultivating, harvesting, processing, or storage of crops, including those planted, cultivated, harvested, and processed for food, ornamental, grazing, feed, or forestry purposes, as well as the feeding, breeding, management, and sale of animals including livestock, poultry, honeybees, and their products.

"Appurtenance" means an object or device in, on, or accessory to a building or structure, and which enhances or is essential to the usefulness of the building or structure, including but not limited to work benches, horticultural and floricultural growing benches, aquacultural, aquaponic, and hydroponic tanks, raceways, troughs, growbeds, and filterbeds, when situated within a structure.

"Aquacultural operation" means the propagation, cultivation, farming, harvesting, processing, and storage of aquatic plants and animals in controlled or selected environments for research, commercial, or stocking purposes and includes aquaponics or any growing of plants or animals in or with aquaculture effluents.

"Manufactured pre-engineered commercial building or structure" means a building or structure whose specifications comply with appropriate county codes, and have been pre-approved by a county or building official.

"Nonresidential building or structure" means a building or structure, including an agricultural building, that is used only for agricultural or aquacultural operations and is not intended for use as, or used as, a dwelling.

(e) This section shall not apply to buildings or structures otherwise exempted from building permitting or building code requirements by applicable county ordinance.

(f) This section shall not be construed to supersede public or private lease conditions.

(g) This section shall not apply to the construction or installation of any building or structure on land in an urban district.

(h) The State or any county shall not be liable for claims arising from the construction of agricultural buildings, structures, or appurtenances thereto exempt from the building code and permitting process as described in this section, unless the claim arises out of gross negligence or intentional misconduct by the State or county.

(i) This section shall not apply to buildings or structures used to store pesticides or other hazardous material unless stored in accordance with federal and state law.

(j) Failure to comply with the conditions of this section shall result in penalties consistent with county building department provisions. [L 2012, c 114, §2; am L 2013, c 203, §2]

" **§46-89 Broadband-related permits; automatic approval.** (a) A county shall approve, approve with modification, or disapprove all applications for broadband-related permits within sixty days of submission of a complete permit application and full payment of any applicable fee. If, on the sixty-first day, an application is not approved, approved with modification, or disapproved by the county, the application shall be deemed approved by the county.

(b) Permits issued pursuant to this section shall contain the following language: "This is a broadband-related permit issued pursuant to section 46-89, Hawaii Revised Statutes."

(c) An applicant and a public utility shall comply with all applicable safety and engineering requirements relating to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology.

(d) No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken in reviewing, approving, modifying, or disapproving a permit application pursuant to this section, or against public utilities resulting from such actions.

(e) The sixty day time period established by subsection (a) shall be extended in the event of a natural disaster, state emergency, or union strike that prevents the applicant, agency, or department from fulfilling application review requirements.

(f) If an application is incomplete, the county agency shall notify the applicant in writing within ten business days of submittal of the application. The notice shall inform the applicant of the specific requirements necessary to complete the application. The sixty-first day automatic approval provisions under subsection (a) shall continue to apply to the application only if the applicant satisfies the specific requirements of the notice and submits a complete application within five business days of receipt of the notice.

(g) Nothing in this section shall affect the provisions of section 3 of Act 151, Session Laws of Hawaii 2011.

(h) For the purposes of this section, "broadband-related permits" means all county permits required to commence actions with respect to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cables, cable installation, tower construction, placement of broadband equipment in the road rights-of-way, and undersea boring, or the landing of an undersea communications cable. The term does not include any county permit for which the approval of a federal agency is explicitly required pursuant to federal law, rule, or regulation, prior to granting final permit approval by the county. [L 2013, c 264, §§2, 5; am L 2016, c 193, §2]

Note

L 2011, c 151, §3, referred to in subsection (g), was amended by L 2013, c 264, §3.

"**PART VI. TAX INCREMENT FINANCING**

§46-101 Short title. This part shall be known and may be cited as the "Tax Increment Financing Act". [L 1985, c 267, pt of §1]

" **§46-102 Definitions.** As used in this part, the following words and terms shall have the following meanings unless the context indicates a different meaning or intent:

"Adjustment rate" means a percentage rate or rates of adjustment of the assessment base determined by the director of finance at the time the tax increment district is established, based on the historical and projected increases to the assessed values of taxable real property within the boundary of the tax increment district and the projected cost increases to the county for servicing the new developments within the tax increment district.

"Assessment base" means the total assessed values of all taxable real property in a tax increment district as most recently certified by the director of finance on the date of creation of the tax increment district.

"Assessment increment" means the amount by which the current assessed values of taxable real property located within the boundaries of a tax increment district exceeds its assessment base.

"Community development plan" means a plan established pursuant to section 206E-5.

"Council" means the council of the county in which a tax increment district is situated.

"County" has the same meaning as set forth in section 1-22 and means the county in which a tax increment district is situated.

"Director of budget" means the office or chief budget officer of the county charged with the responsibility of preparing and reviewing the operating and capital budget programs of the county.

"Director of finance" means the officer or officers of the county charged with the responsibility of administering the real property taxation function of the county.

"High technology parks" means an industrial park that has been developed to accommodate and support high technology activities including the Hawaii technology park at Mililani town, city and county of Honolulu, the Maui research and technology park, Maui county, and the Hawaii ocean science and technology (HOST) park, Hawaii county.

"Project costs" means expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the agency that are listed in a tax increment financing plan as costs of public works or public improvements in a tax increment district, plus other costs incidental to the expenditures or obligations. Project costs include:

(1) Capital costs, including the actual costs of the construction of public works or public improvements, new buildings, structures, and fixtures; the actual costs of the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; and the actual costs of the acquisition, clearing, and grading of land;

(2) Financing costs, including, but not limited to, all necessary and incidental expenses related to the issuance of tax increment bonds and all interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs, any capitalized interest, and any premium paid over the

principal amount of the obligations because of the redemption of the obligations prior to maturity;

(3) Professional service costs, including architectural, planning, engineering, marketing, appraisal, financial consultant, and special services and legal advice;

(4) Imputed administrative costs, including reasonable charges for the time spent by employees of the agency in connection with the implementation of a tax increment financing plan;

(5) Relocation costs to the extent required by federal or state law;

(6) Organizational costs, including the costs of conducting environmental impact studies or other studies, the costs of publicizing the creation of a tax increment district, and the cost of implementing the tax increment financing plan for the tax increment district;

(7) Payments determined by the county council to be necessary or convenient to the creation of a tax increment district or to the implementation of the tax increment financing plan for the tax increment district.

"Redevelopment agency" or "agency" means an agency defined in section 53-1 or the Hawaii community development authority as established pursuant to chapter 206E.

"Redevelopment plan" means a plan as defined in section 53-1.

"Tax increment" means the amount of real property taxes levied for one year on the assessment increment.

"Tax increment bonds" mean bonds, notes, interim certificates, debentures, or other obligations issued pursuant to this part.

"Tax increment district" or "district" means a contiguous or noncontiguous geographic area designated pursuant to section 46-103 by the county council for the purpose of tax increment financing.

"Tax increment financing plan" means the plan for tax increment financing for a tax increment district submitted to the county council. The tax increment financing plan shall contain estimates of: project costs; amount of tax increment bonds to be issued; sources of revenue to finance or otherwise pay project costs; the most recent assessed value of taxable real property in the district; the duration of the district's existence; and statements from the county's department of finance, and the county's department of budget, if applicable, regarding the financial and budgetary impacts on the county resulting from the proposed tax increment financing plan.

"Tax increment fund" means a fund which shall be held by the director of finance or other fiduciary designated by the county council and into which all tax increments and other moneys pledged by the county for payment of tax increment bonds are paid, and all proceeds from the sale of tax increment bonds are deposited, and from which moneys are disbursed to pay project costs for the tax increment district or to satisfy claims of holders of tax increment bonds issued for the district. [L 1985, c 267, pt of §1; am L 1987, c 248, §2]

" **§46-103 Establishment of tax increment district.** Any county council may provide for tax increment financing by approving a tax increment financing plan and adopting an ordinance establishing the tax increment district. The ordinance shall:

(1) Describe the boundaries of the tax increment district;
(2) Provide for the date of commencement of the tax increment district and date of termination of the district;
(3) Provide for the establishment of a tax increment fund for the district; and
(4) Provide for such other matters deemed to be pertinent and desirable for tax increment financing and not inconsistent with any relevant redevelopment plan, community development plan, high technology park plan, or telecommunication development plan. [L 1985, c 267, pt of §1; am L 1987, c 248, §3]

" **§46-104 County powers.** A county may exercise any power necessary and convenient to establish tax increment districts, including the power to:

(1) Create tax increment districts and determine the boundaries of the districts;
(2) Issue tax increment bonds;
(3) Deposit tax increments into the tax increment fund created for a tax increment district; and
(4) Enter into agreements, including agreements with the redevelopment agency and owners or developers of project lands and bondholders, determined to be necessary or convenient to implement redevelopment plans or community development plans, as the case may be, and achieve their purposes. [L 1985, c 267, pt of §1; am L 1987, c 248, §4]

" **§46-105 Collection of tax increments.** (a) The county by ordinance shall provide for the allocation of real property taxes and tax increments in the manner required by this part.

(b) If a county exercises the power allowed under this part, then commencing with the first payment of real property taxes levied by the county subsequent to the time a tax increment district takes effect, receipts from real property taxes shall be allocated and paid over as follows:

(1) The amount of real property tax produced from the assessment base shall be paid to the county general fund; and

(2) The tax increments produced from the assessment increment in the tax increment district shall be applied as follows:

(A) First, an amount equal to the installment of (i) principal and interest falling due of any tax increment bonds, or (ii) any project cost approved by the county, shall be deposited into the tax increment fund established for the tax increment district.

(B) Second, an amount equal to the adjustment rate times the amount of real property tax produced from the assessment base shall be computed and paid to the county general fund.

(C) Third, the remaining amount of tax increments, if any, shall be deposited into the tax increment fund established for the tax increment district.

(c) The allocation of real property taxes pursuant to this part shall in no way limit the power of the county under section 47-12 to levy ad valorem taxes without limitation as to rate or amount on all real property subject to taxation by the county for the payment of the principal and interest of its general obligation bonds. [L 1985, c 267, pt of §1; am L 1990, c 34, §5]

" **§46-106 Tax increment bonds.** (a) A county may issue tax increment bonds, the proceeds of which may be used to pay project costs for a tax increment district or to satisfy claims of bondholders. The county may issue refunding bonds previously issued by the county for the purpose of paying or retiring or in exchange for tax increment bonds previously issued by the county. Principal and interest on tax increment bonds shall be made payable, as to both principal and interest, solely from the tax increment fund established for the tax increment district.

A county may provide in its contract with the owners or holders of the tax increment bonds that the county will pay into the tax increment fund all or any part of the revenue or money produced or received as a result of the operation or sale of a facility acquired, improved, or constructed pursuant to a redevelopment plan or community development plan, as the case may be, to be used to pay principal and interest on the tax

increment bonds and, if a county so agrees, the owners or holders of the tax increment bonds may have a lien or mortgage on any facility acquired, improved, or constructed with the proceeds of the tax increment bonds.

(b) Tax increment bonds, and the income therefrom, issued pursuant to this part shall be exempt from all state and county taxation, except estate and transfer taxes.

The bonds shall be authorized by ordinance and may be issued in one or more series. The tax increment bonds of each issue shall be dated, be payable upon demand or mature at a time or times not exceeding thirty years from their date of issuance, bear interest at a rate or rates, be in a denomination or denominations, be in registered form, have a rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, and be subject to terms of redemption (with or without premium), be secured in a manner, and have other characteristics as may be provided by the ordinance providing for issuance of the bonds or by the trust indenture or mortgage issued in connection with the bonds. The county may sell tax increment bonds in such manner, either at public or private sale, and for such price as it may determine.

(c) Prior to the preparation of definitive tax increment bonds, the county may issue interim receipts or temporary bonds exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(d) Should any bond issued under this part become mutilated or be lost, stolen, or destroyed, the county may cause a new bond of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of such mutilated bond, or in lieu of and in substitution for such lost, stolen, or destroyed bond. Such new bond shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond:

(1) Has paid reasonable expenses and charges in connection therewith;

(2) In the case of a lost, stolen, or destroyed bond, has filed with the county or its fiduciary satisfactory evidence that such bond was lost, stolen, or destroyed, and that the holder was owner thereof; and

(3) Has furnished indemnity satisfactory to the county.

(e) Notwithstanding any of the provisions of this part or any recital in any tax increment bond issued under this part, all tax increment bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions pertaining to registration.

(f) In any suit, action, or other proceeding involving the validity or enforceability of a bond issued under this part or

the security for a bond or note issued under this part, a bond reciting in substance that it had been issued by the county for a tax increment district shall be conclusively deemed to have been issued for that purpose, and the development or redevelopment of the district conclusively shall be deemed to have been planned, located, and carried out as provided by this part.

(g) All banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all personal representatives, administrators, curators, trustees, and other fiduciaries legally may invest sinking funds, money, or other funds belonging to them or within their control in tax increment bonds issued by a county pursuant to this part. The bonds shall be authorized security for all public deposits. Any person, political subdivision, and officer, public or private, are authorized to use funds owned or controlled by them for the purchase of tax increment bonds. This part does not relieve any person of the duty to exercise reasonable care in selecting securities.

(h) Tax increment bonds shall be payable only out of the tax increment fund. The county council may pledge irrevocably all or a part of the fund for payment of the bonds. The part of the fund pledged in payment thereafter shall be used only for the payment of the bonds or interest or redemption premium, if any, on the bonds until the bonds have been fully paid. A holder of the bonds shall have a lien against the fund for payment of the bonds and interest thereon and may either at law or in equity protect and enforce such lien.

(i) No officer of the county including any officer executing tax increment bonds shall be liable for the tax increment bonds by reason of the issuance thereof. Tax increment bonds issued under this part shall not be general obligations of the State or county, nor in any event shall they give rise to a charge against the general credit or taxing powers of the State or county or be payable other than as provided by this part. No holder of bonds issued under this part shall have the right to compel any exercise of the taxing power of the State or county to pay such bonds or the interest thereon, and no moneys other than the moneys in the tax increment fund pledged to the bonds shall be applied to the payment thereof. Tax increment bonds issued under this part shall state these restrictions on their face.

(j) The tax increment bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all persons whose signatures appear thereon shall have ceased to be officers of the county.

(k) Tax increment bonds shall not be issued in an amount exceeding the total costs of implementing the tax increment financing plan for which they were issued. [L 1985, c 267, pt of §1]

" **§46-107 Tax increment bond anticipation notes.** Whenever the county has authorized the issuance of tax increment bonds under this part, tax increment bond anticipation notes of the county may be issued in anticipation of the issuance of such bonds and of the receipt of the proceeds of sale thereof, for the purposes for which such bonds have been authorized. All tax increment bond anticipation notes shall be authorized by the county, and the maximum principal amount of such notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the tax increment bonds in anticipation of which the notes are issued and the moneys in the tax increment fund from which would be payable and by which would be secured such bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of such bonds, the maximum amount of bonds authorized in anticipation of which the notes are issued shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and details of such notes shall be governed by this part with respect to tax increment bonds insofar as the same may be applicable; provided that each note, together with renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note. [L 1985, c 267, pt of §1]

" **§46-108 Annual report.** The county council by ordinance may require the director of finance to prepare a report to the county council on the status of the tax increment district. The county council shall determine what information and data are required to be included in the report. [L 1985, c 267, pt of §1]

" **§46-109 Termination of a tax increment district.** A tax increment district shall terminate at the time designated in the ordinance creating the district or at an earlier time designated by a subsequent ordinance, but in no event shall the district terminate until such time as all project costs and tax increment

bonds issued for the district and the interest thereon, have been paid in full, or sufficient funds have been irrevocably deposited in a special fund or other escrow account held in trust for all outstanding tax increment bonds issued for such district to provide for the payment of such bonds at maturity or date of redemption and interest and premium, if any, thereon. [L 1985, c 267, pt of §1]

" **§46-110 Tax increment fund.** (a) Money shall be disbursed from the tax increment fund for a tax increment district only to satisfy the claims of holders of tax increment bonds issued for the tax increment district or to pay project costs for the district, or to make payments to the county as provided by subsection (c).

(b) Subject to an agreement with the holders of tax increment bonds, money in a tax increment fund may be temporarily invested in the same manner as other funds of the county.

(c) In any year in which the tax increment exceeds the amount necessary to pay all project costs and all installments of principal and interest of tax increment bonds issued for a tax increment district falling due and the amount paid to the county general fund pursuant to section 46-105(b)(2)(B), and subject to any agreement with bondholders, any excess money in the fund at the option of the county council, shall be used to redeem or purchase any outstanding tax increment bonds issued for the district, discharge the pledge of tax increment therefor, be paid into an escrow account dedicated to the payment of such bonds, be paid over to the county general fund, or any combination thereof. [L 1985, c 267, pt of §1]

" **§46-111 Computation of tax increment.** (a) Upon or after creation of a tax increment district, the director of finance of the county in which the district is situated shall certify the assessment base of the tax increment district and shall certify in each year thereafter the amount by which the assessment base has increased or decreased as a result of a change in tax exempt status of property within the district, or reduction or enlargement of the district. The amount to be added to the assessment base of the district as a result of previously tax exempt real property within the district becoming taxable shall be equal to the assessed value of the real property as most recently assessed or, if the assessment was made more than one year prior to the date of transfer rendering the property taxable, the value which shall be assessed by the director of finance at the time of such transfer. The amount to be added to the assessment base of the district as a result of enlargements

thereof shall be equal to the assessed value of the additional real property as most recently certified by the director of finance as of the date of modification of the tax increment financing plan. The amount to be subtracted from the assessment base of the district as a result of previously taxable real property within the district becoming tax exempt, or a reduction in the geographic area of the district, shall be the amount of assessment base initially attributed to the property becoming tax exempt or being removed from the district.

If the assessed value of property located within the tax increment district is reduced by reason of a court-ordered abatement, stipulated agreement, or voluntary abatement made by the director of finance, the reduction shall be applied to the assessment base of the district when the property upon which the abatement is made has not been improved since the date of creation of the district, and to the assessment increment of the district in each year thereafter when the abatement relates to improvements made after the date of creation.

(b) The director of finance shall certify the amount of the assessment increment to the county and redevelopment agency each year, together with the proportion that the assessment increment bears to the total assessed value of the real property within the tax increment district for that year. [L 1985, c 267, pt of §1]

Revision Note

Subsection (a) designation added.

" **§46-112 Tax on leased redevelopment property.** Whenever property in the tax increment district has been redeveloped and thereafter is leased by the county or redevelopment agency to any person or whenever the county or agency leases real property in any tax increment district to any person for redevelopment, the property shall be assessed and taxed in the same manner as privately owned property, and the lease or contract shall provide that the lessee shall pay taxes upon the assessed value of the entire property and not merely the assessed value of the lessee's leasehold interest. [L 1985, c 267, pt of §1]

" **§46-113 Cumulative effect.** Neither this part nor anything contained in this part shall be construed as a restriction or limitation upon any power which a county might otherwise have under any law of this State, but shall be construed as cumulative. The authorization granted may be carried out by the county council acting at any regular or special meeting. [L 1985, c 267, pt of §1]

"[PART VII.] DEVELOPMENT AGREEMENTS

Law Journals and Reviews

Is Agricultural Land in Hawai‘i "Ripe" for a Takings Analysis? 24 UH L. Rev. 121.

Avoiding the Next Hokuli‘a: The Debate over Hawai‘i's Agricultural Subdivisions. 27 UH L. Rev. 441.

[§46-121] Findings and purpose. The legislature finds that with land use laws taking on refinements that make the development of land complex, time consuming, and requiring advance financial commitments, the development approval process involves the expenditure of considerable sums of money. Generally speaking, the larger the project contemplated, the greater the expenses and the more time involved in complying with the conditions precedent to filing for a building permit.

The lack of certainty in the development approval process can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning. Predictability would encourage maximum efficient utilization of resources at the least economic cost to the public.

Public benefits derived from development agreements may include, but are not limited to, affordable housing, design standards, and on-and off-site infrastructure and other improvements. Such benefits may be negotiated for in return for the vesting of development rights for a specific period.

Under appropriate circumstances, development agreements could strengthen the public planning process, encourage private and public participation in the comprehensive planning process, reduce the economic cost of development, allow for the orderly planning of public facilities and services and the allocation of cost. As an administrative act, development agreements will provide assurances to the applicant for a particular development project, that upon approval of the project, the applicant may proceed with the project in accordance with all applicable statutes, ordinances, resolutions, rules, and policies in existence at the time the development agreement is executed and that the project will not be restricted or prohibited by the county's subsequent enactment or adoption of laws, ordinances, resolutions, rules, or policies.

Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted county legislation which may conflict with any term or provision of the development agreement or in any way

hinder, restrict, or prevent the development of the project. Development agreements are intended to provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enact and enforce laws which promote the public safety, health, and general welfare of the citizens of our State. The purpose of this part is to provide a means by which an individual may be assured at a specific point in time that having met or having agreed to meet all of the terms and conditions of the development agreement, the individual's rights to develop a property in a certain manner shall be vested. [L 1985, c 48, pt of §1]

Law Journals and Reviews

Arrow of Time: Vested Rights, Zoning Estoppel, and Development Agreements in Hawai‘i. 27 UH L. Rev. 17.

" **[§46-122] Definitions.** The following terms when used in this chapter shall have the following respective meanings:

"County executive agency" means any department, office, board, or commission of a county.

"County legislative body" means the city council or county council of a county.

"Person" means an individual, group, partnership, firm, association, corporation, trust, governmental agency, governmental official, administrative body, or tribunal or any form of business or legal entity.

"Principal" means a person who has entered into a development agreement pursuant to the procedures specified in this chapter, including a successor in interest. [L 1985, c 48, pt of §1]

Revision Note

Definitions rearranged.

" **[§46-123] General authorization.** Any county by ordinance may authorize the executive branch of the county to enter into a development agreement with any person having a legal or equitable interest in real property, for the development of such property in accordance with this part; provided that such an ordinance shall:

(1) Establish procedures and requirements for the consideration of development agreements upon application by or on behalf of persons having a legal

or equitable interest in the property, in accordance with this part;

(2) Designate a county executive agency to administer the agreements after such agreements become effective;

(3) Include provisions to require the designated agency to conduct a review of compliance with the terms and conditions of the development agreement, on a periodic basis as established by the development agreement; and

(4) Include provisions establishing reasonable time periods for the review and appeal of modifications of the development agreement. [L 1985, c 48, pt of §1]

" **[§46-124] Negotiating development agreements.** The mayor or the designated agency appointed to administer development agreements may make such arrangements as may be necessary or proper to enter into development agreements, including negotiating and drafting individual development agreements; provided that the county has adopted an ordinance pursuant to section 46-123.

The final draft of each individual development agreement shall be presented to the county legislative body for approval or modification prior to execution. To be binding on the county, a development agreement must be approved by the county legislative body and executed by the mayor on behalf of the county. County legislative approval shall be by resolution adopted by a majority of the membership of the county legislative body. [L 1985, c 48, pt of §1]

" **[§46-125] Periodic review; termination of agreement.** (a) If, as a result of a periodic review, the designated agency finds and determines that the principal has committed a material breach of the terms or conditions of the agreement, the designated agency shall serve notice in writing, within a reasonable time period after the periodic review, upon the principal setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the principal a reasonable time period in which to cure such material breach.

(b) If the principal fails to cure the material breach within the time period given, then the county unilaterally may terminate or modify the agreement; provided that the designated agency has first given the principal the opportunity, (1) to rebut the finding and determination; or (2) to consent to amend the agreement to meet the concerns of the designated agency with respect to the finding and determination. [L 1985, c 48, pt of §1]

" **[§46-126] Development agreement; provisions.** (a) A development agreement shall:

(1) Describe the land subject to the development agreement;

(2) Specify the permitted uses of the property, the density or intensity of use, and the maximum height and size of proposed buildings;

(3) Provide, where appropriate, for reservation or dedication of land for public purposes as may be required or permitted pursuant to laws, ordinances, resolutions, rules, or policies in effect at the time of entering into the agreement; and

(4) Provide a termination date; provided that the parties shall not be precluded from extending the termination date by mutual agreement or from entering subsequent development agreements.

(b) The development agreement may provide commencement dates and completion dates; provided that such dates as may be set forth in the agreement may be extended at the discretion of the county at the request of the principal upon good cause shown subject to subsection (a)(4).

(c) The development agreement also may cover any other matter not inconsistent with this chapter, nor prohibited by law.

(d) In addition to the county and principal, any federal, state, or local government agency or body may be included as a party to the development agreement. If more than one government body is made party to an agreement, the agreement shall specify which agency shall be responsible for the overall administration of the agreement. [L 1985, c 48, pt of §1]

" **[§46-127] Enforceability; applicability.** (a) Unless terminated pursuant to section 46-125 or unless canceled pursuant to section 46-130, a development agreement, amended development agreement, or modified development agreement once entered into, shall be enforceable by any party thereto, or their successors in interest, notwithstanding any subsequent change in any applicable law adopted by the county entering into such agreement, which alter or amend the laws, ordinances, resolutions, rules, or policies specified in this part.

(b) All laws, ordinances, resolutions, rules, and policies governing permitted uses of the land that is the subject of the development agreement, including but not limited to uses, density, design, height, size, and building specification of proposed buildings, construction standards and specifications, and water utilization requirements applicable to the development of the property subject to a development agreement, shall be

those laws, ordinances, resolutions, rules, regulations, and policies made applicable and in force at the time of execution of the agreement, notwithstanding any subsequent change in any applicable law adopted by the county entering into such agreement, which alter or amend the laws, ordinances, resolutions, rules, or policies specified in this part and such subsequent change shall be void as applied to property subject to such agreement to the extent that it changes any law, ordinance, resolution, rule, or policy which any party to the agreement has agreed to maintain in force as written at the time of execution; provided that a development agreement shall not prevent a government body from requiring the principal from complying with laws, ordinances, resolutions, rules, and policies of general applicability enacted subsequent to the date of the development agreement if they could have been lawfully applied to the property which is the subject of the development agreement at the time of execution of the agreement if the government body finds it necessary to impose the requirements because a failure to do so would place the residents of the subdivision or of the immediate community, or both, in a condition perilous to the residents' health or safety, or both. [L 1985, c 48, pt of §1]

" **[§46-128] Public hearing.** No development agreement shall be entered into unless a public hearing on the application therefor first shall have been held by the county legislative body. [L 1985, c 48, pt of §1]

" **[§46-129] County general plan and development plans.** No development agreement shall be entered into unless the county legislative body finds that the provisions of the proposed development agreement are consistent with the county's general plan and any applicable development plan, effective as of the effective date of the development agreement. [L 1985, c 48, pt of §1]

" **[§46-130] Amendment or cancellation.** A development agreement may be amended or canceled, in whole or in part, by mutual consent of the parties to the agreement, or their successors in interest; provided that if the county determines that a proposed amendment would substantially alter the original development agreement, a public hearing on the amendment shall be held by the county legislative body before it consents to the proposed amendment. [L 1985, c 48, pt of §1]

" **[§46-131] Administrative act.** Each development agreement shall be deemed an administrative act of the government body made party to the agreement. [L 1985, c 48, pt of §1]

" **[§46-132] Filing or recordation.** The designated agency shall be responsible to file or record a copy of the development agreement or an amendment to such agreement in the office of the assistant registrar of the land court of the State of Hawaii or in the bureau of conveyances, or both, whichever is appropriate, within twenty days after the county enters into a development agreement or an amendment to such an agreement. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement. [L 1985, c 48, pt of §1]

"[PART VIII.] IMPACT FEES

Revision Note

Sections 46-141 to 46-148, enacted as a new chapter, are codified to this chapter pursuant to §23G-15(1).

§46-141 Definitions. As used in this part, unless the context requires otherwise:

"Board" means the board of water supply or water board of any county.

"Capital improvements" means the acquisition of real property, improvements to expand capacity and serviceability of existing public facilities, and the development of new public facilities.

"Comprehensive plan" means a coordinated land use plan for the development of public facilities within the jurisdiction of a county based on existing and anticipated needs, showing existing and proposed developments, stating principles to which future development should conform, such as the county's general plans, development plans, or community plans, and the manner in which development should be controlled. In the case of the city and county of Honolulu, public facility maps shall be equivalent to the comprehensive plan required in this part.

"County" or "counties" means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.

"Credits" means the present value of past or future payments or contributions, including, but not limited to, the dedication of land or construction of a public facility made by a developer toward the cost of existing or future public facility capital improvements, except for contributions or

payments made under a development agreement pursuant to section 46-123.

"Developer" means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any development activity.

"Development" means any artificial change to real property that requires a grading or building permit as appropriate, including, but not limited to, construction, expansion, enlargement, alteration, or erection of buildings or structures.

"Discount rate" means the interest rate, expressed in terms of an annual percentage, that is used to adjust past or future financial or monetary payments to present value.

"Impact fees" means the charges imposed upon a developer by a county or board to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected, or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of a development.

"Needs assessment study" means a study required under an impact fee ordinance that determines the need for a public facility, the cost of development, and the level of service standards, and that projects future public facility capital improvement needs; provided that the study shall take into consideration and incorporate any relevant county general plan, development plan, or community plan.

"Non-site related improvements" means land dedications or the provision of public facility capital improvements that are not for the exclusive use or benefit of a development and are not site-related improvements.

"Offset" means a reduction in impact fees designed to fairly reflect the value of non-site related public facility capital improvements provided by a developer pursuant to county land use provisions.

"Present value" means the value of past or future payments adjusted to a base period by a discount rate.

"Proportionate share" means the portion of total public facility capital improvement costs that is reasonably attributable to a development, less:

(1) Any credits for past or future payments, adjusted to present value, for public facility capital improvement costs made or reasonably anticipated to be contributed by a developer in the form of user fees, debt service payments, taxes, or other payments; or

(2) Offsets for non-site related public facility capital improvements provided by a developer pursuant to county land use provisions.

"Public facility capital improvement costs" means costs of land acquisition, construction, planning and engineering, administration, and legal and financial consulting fees associated with construction, expansion, or improvement of a public facility. Public facility capital improvement costs do not include expenditures for required affordable housing, routine and periodic maintenance, personnel, training, or other operating costs.

"Reasonable benefit" means a benefit received by a development from a public facility capital improvement that is greater than the benefit afforded the general public in the jurisdiction imposing the impact fees. Incidental benefit to other developments shall not negate a "reasonable" benefit to a development.

"Recoupment" means the proportionate share of the public facility capital improvement costs of excess capacity in existing capital facilities where excess capacity has been provided in anticipation of the needs of a development.

"Site-related improvements" means land dedications or the provision of public facility capital improvements for the exclusive use or benefit of a development or for the provision of safe and adequate public facilities related to a particular development. [L 1992, c 282, pt of §2; am L 2001, c 235, §1]

" **§46-142 Authority to impose impact fees; enactment of ordinances required.** (a) Impact fees may be assessed, imposed, levied, and collected by:

(1) Any county for any development, or portion thereof, not involving water supply or service; or

(2) Any board for any development, or portion thereof, involving water supply or service;

provided that the county enacts appropriate impact fee ordinances or the board adopts rules to effectuate the imposition and collection of the fees within their respective jurisdictions.

(b) Except for any ordinance governing impact fees enacted before July 1, 1993, impact fees may be imposed only for those types of public facility capital improvements specifically identified in a county comprehensive plan or a facility needs assessment study. The plan or study shall specify the service standards for each type of facility subject to an impact fee; provided that the standards shall apply equally to existing and new public facilities. [L 1992, c 282, pt of §2; am L 1996, c 175, §1; am L 2001, c 235, §2]

Cross References

Impact fees for highway improvements, see §§264-121 to 127.

" **[§46-142.5 School impact districts; new building permit requirements.]** No new residential development in a designated school impact district under chapter 302A shall be issued a residential building permit or condominium property regime building permit until the department of education provides written confirmation that the permit applicant has fulfilled its school impact fee requirements. This section shall only apply to new dwelling units. [L 2007, c 245, §3]

Cross References

Impact fees for public highways, see §§264-121 to 127.

" **§46-143 Impact fee calculation.** (a) A county council or board considering the enactment or adoption of impact fees shall first approve a needs assessment study that shall identify the kinds of public facilities for which the fees shall be imposed. The study shall be prepared by an engineer, architect, or other qualified professional and shall identify service standard levels, project public facility capital improvement needs, and differentiate between existing and future needs.

(b) The data sources and methodology upon which needs assessments and impact fees are based shall be set forth in the needs assessment study.

(c) The pro rata amount of each impact fee shall be based upon the development and actual capital cost of public facility expansion, or a reasonable estimate thereof, to be incurred.

(d) An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred in accommodating the development. The following seven factors shall be considered in determining a proportionate share of public facility capital improvement costs:

(1) The level of public facility capital improvements required to appropriately serve a development, based on a needs assessment study that identifies:
    (A) Deficiencies in existing public facilities;
    (B) The means, other than impact fees, by which existing deficiencies will be eliminated within a reasonable period of time; and
    (C) Additional demands anticipated to be placed on specified public facilities by a development;
(2) The availability of other funding for public facility capital improvements, including but not limited to

user charges, taxes, bonds, intergovernmental transfers, and special taxation or assessments;

(3) The cost of existing public facility capital improvements;

(4) The methods by which existing public facility capital improvements were financed;

(5) The extent to which a developer required to pay impact fees has contributed in the previous five years to the cost of existing public facility capital improvements and received no reasonable benefit therefrom, and any credits that may be due to a development because of such contributions;

(6) The extent to which a developer required to pay impact fees over the next twenty years may reasonably be anticipated to contribute to the cost of existing public facility capital improvements through user fees, debt service payments, or other payments, and any credits that may accrue to a development because of future payments; and

(7) The extent to which a developer is required to pay impact fees as a condition precedent to the development of non-site related public facility capital improvements, and any offsets payable to a developer because of this provision.

(e) The impact fee ordinance shall contain a provision setting forth the process by which a developer may contest the amount of the impact fee assessed. [L 1992, c 282, pt of §2; am L 2001, c 235, §3; am L 2004, c 155, §3]

" **§46-144 Collection and expenditure of impact fees.** Collection and expenditure of impact fees assessed, imposed, levied, and collected for development shall be reasonably related to the benefits accruing to the development. To determine whether the fees are reasonably related, the impact fee ordinance or board rule shall provide that:

(1) Upon collection, the fees shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund;

(2) Collection and expenditure shall be localized to provide a reasonable benefit to the development. A county or board shall establish geographically limited benefit zones for this purpose; provided that zones shall not be required if a reasonable benefit can be otherwise derived. Benefit zones shall be appropriate to the particular public facility and the county or board. A county or board shall explain in writing and

disclose at a public hearing reasons for establishing or not establishing benefit zones;

(3) Except for recoupment, impact fees shall not be collected from a developer until approval of a needs assessment study that sets out planned expenditures bearing a substantial relationship to the needs or anticipated needs created by the development;

(4) Impact fees shall be expended for public facilities of the type for which they are collected and of reasonable benefit to the development; and

(5) Within six years of the date of collection, the impact fees shall be expended or encumbered for the construction of public facility capital improvements that are consistent with the needs assessment study and of reasonable benefit to the development. [L 1992, c 282, pt of §2; am L 2001, c 235, §4]

" **§46-145 Refund of impact fees.** (a) If impact fees are not expended or encumbered within the period established in section 46-144, the county or the board shall refund to the developer or the developer's successor in title the amount of fees paid and any accrued interest. Application for a refund shall be submitted to the county or the board within one year of the date on which the right to claim arises. Any unclaimed refund shall be retained in the special trust fund or interest bearing account and be expended as provided in section 46-144.

(b) If a county or board seeks to terminate impact fee requirements, all unexpended or unencumbered funds shall be refunded as provided in subsection (a) and the county or board shall give public notice of termination and availability of refunds at least two times. All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be transferred to:

(1) The county's general fund and expended for any public purpose not involving water supply or service as determined by the county council; or

(2) The board's general fund and expended for any public purpose involving water supply or service as determined by the board.

(c) Recoupment shall be exempt from subsections (a) and (b). [L 1992, c 282, pt of §2; am L 1998, c 2, §14; am L 2001, c 235, §5]

" **[§46-146] Time of assessment and collection of impact fees.** Assessment of impact fees shall be a condition precedent to the issuance of a grading or building permit and shall be

collected in full before or upon issuance of the permit. [L 1992, c 282, pt of §2]

" **[§46-147] Effect on existing ordinances.** This part shall not invalidate any impact fee ordinance existing on June 19, 1992. [L 1992, c 282, pt of §2]

Revision Note

"Part" substituted for "chapter".
"June 19, 1992" substituted for "the effective date of this Act".

" **[§46-148] Transitions.** Any county requiring impact fees or imposing development exactions, in order to fund public facilities, shall incorporate fee requirements into their broader system of development and land use regulations in such a manner that developments, either collectively or individually, are not required to pay or otherwise contribute more than a proportionate share of public facility capital improvements. Development contributions or payments made under a development agreement, pursuant to section 46-123, are exempted from this requirement. [L 1992, c 282, pt of §2]

"[PART IX.] TRANSFER OF DEVELOPMENT RIGHTS

[§46-161] Findings and purpose. The legislature finds that there is a need to clarify the authority of the counties to exercise the power to transfer development rights within a comprehensive planning program to:

(1) Protect the natural, scenic, recreational, and agricultural qualities of open lands including critical resource areas; and
(2) Enhance sites and areas of special character or special historical, cultural, aesthetic, or economic interest or value.

The legislature finds that transfer of development rights programs can help to ensure proper growth, while protecting open and distinctive areas and spaces of varied size and character, including many areas that have significant agricultural, ecological, scenic, historical, aesthetic, or economic value. These areas, if preserved and maintained in their present state, would constitute important physical, social, aesthetic, or economic assets to existing or impending urban and metropolitan development. The legislature further finds that transferring development rights is a useful technique to achieve community objectives. Properly utilized, the concept can be fully

consistent with comprehensive planning requirements. The legislature further finds and declares that the concept, utilizing the normal market in land, can provide a mechanism of just compensation to owners of property to be protected or preserved. [L 1998, c 296, pt of §1]

" **[§46-162] Definitions.** As used in this part, unless the context clearly requires otherwise:

"Council" means the county council.

"Development rights" means the rights permitted for a lot, parcel, or area of land under a zoning ordinance or local law respecting permissible use, area, density, bulk, or height of improvements thereon. Development rights may be calculated and allocated in accordance with factors such as area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this part.

"Receiving district" means one or more designated districts or areas of land to which development rights generated from one or more sending districts may be transferred and in which increased development is permitted to occur by reason of this transfer.

"Sending district" means one or more designated districts or areas of land in which development rights may be designated for use in one or more receiving districts.

"Transfer of development rights" means the process by which development rights are transferred from one lot, parcel, or area of land in any sending district to another lot, parcel, or area of land in one or more receiving districts. [L 1998, c 296, pt of §1]

" **[§46-163] Conditions for the transfer of development rights.** In addition to any existing power, duty, and authority of the counties to regulate land uses by planning or zoning, the counties are hereby authorized to transfer and regulate the transfer of development rights, subject to the conditions set forth under this part, as well as planning laws, zoning laws, and any other conditions as the legislative body of each county deems necessary and appropriate. The purpose of providing for transfer of development rights shall be to:

(1) Protect the natural, scenic, and agricultural qualities of open lands;

(2) Enhance sites and areas of special character or special historical, cultural, aesthetic, or economic interest or value; and

(3) Enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource. [L 1998, c 296, pt of §1]

Revision Note

Subsection designation deleted pursuant to §23G-15(1).

" **[§46-164] Procedures.** Any county modifying its zoning ordinance or enacting a local law pursuant to this part shall follow the procedure for adopting and amending its ordinances. [L 1998, c 296, pt of §1]

" **[§46-165] Other rights not affected.** Nothing in this part shall be construed to invalidate any provision relating to the transference or purchase of development rights heretofore or hereafter adopted by any county. [L 1998, c 296, pt of §1]

"[PART X.] QUI TAM ACTIONS OR RECOVERY OF FALSE CLAIMS TO THE COUNTIES

§46-171 Actions for false claims to the counties; qui tam actions. (a) Any person who:

(1) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(3) Has possession, custody, or control of property or money used, or to be used, by a county and, intending to defraud a county or to wilfully conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(4) Is authorized to make or deliver a document certifying receipt of property used, or to be used by a county and, intending to defraud a county, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(5) Buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of a county that the person knows is not lawfully authorized to sell or pledge the property;

(6) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to a county, or

knowingly conceals, or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a county;

(7) Is a beneficiary of an inadvertent submission of a false claim to a county, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the county within a reasonable time after discovery of the false claim; or

(8) Conspires to commit any of the conduct described in this subsection,

shall be liable to the county for a civil penalty of not less than $5,500 and not more than $11,000, plus three times the amount of damages that the county sustains due to the act of that person.

(b) If the court finds that a person who has violated subsection (a):

(1) Furnished officials of the county responsible for investigating false claims violations with all information known to the person about the violation within thirty days after the date on which the defendant first obtained the information;

(2) Fully cooperated with any county investigation of the violation; and

(3) At the time the person furnished the county with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation;

the court may assess not less than two times the amount of damages that the county sustains because of the act of the person. A person violating subsection (a) shall also be liable to the county for the costs and attorneys' fees of a civil action brought to recover the penalty or damages.

(c) Liability under this section shall be joint and several for any act committed by two or more persons.

(d) This section shall not apply to any controversy involving an amount of less than $500 in value. For purposes of this subsection, "controversy" means the aggregate of any one or more false claims submitted by the same person in violation of this part. Proof of specific intent to defraud is not required.

(e) For purposes of this section:

"Claim" means any request or demand, whether under a contract or otherwise, for money or property, and whether or not a county has title to the money or property, that is presented to an officer, employee, or agent of the county or is made to a

contractor, grantee, or other recipient, if the money or property is to be spent or used on the county's behalf or to advance a county program or interest, and if the county provides or has provided any portion of the money or property that is requested or demanded or will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. "Claim" shall not include requests or demands for money or property that a county has paid to an individual as compensation for employment or as an income subsidy with no restrictions on that individual's use of the money or property.

"Knowing" and "knowingly" means that a person, with respect to information:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information;

and no proof of specific intent to defraud is required.

"Material" means having the tendency to influence or capability to influence the payment or receipt of money or property.

"Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute, regulation, or administrative rule, or from the retention of any overpayment. [L 2001, c 227, pt of §1; am L 2012, c 294, §2]

" **[§46-172] Civil actions for false claims.** The county corporation counsel or county attorney shall investigate any violation under section 46-171. If the corporation counsel or county attorney finds that a person has violated or is violating section 46-171, the corporation counsel or county attorney may bring a civil action under this section. [L 2001, c 227, pt of §1]

" **[§46-173] Evidentiary determination; burden of proof.** A determination that a person has violated this part shall be based on a preponderance of the evidence. [L 2001, c 227, pt of §1]

" **[§46-174] Statute of limitations.** An action for false claims to a county pursuant to this part shall be brought within six years after the false claim is discovered or by exercise of reasonable diligence should have been discovered and, in any event, no more than ten years after the date on which the

violation of section 46-171 is committed. [L 2001, c 227, pt of §1]

" **[§46-175] Action by private persons.** (a) A person may bring a civil action for a violation of section 46-171 for the person and for a county. The action shall be brought in the name of the county. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this part.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the county in accordance with the Hawaii rules of civil procedure. The complaint:

(1) Shall be filed in camera;

(2) Shall remain under seal for at least sixty days; and

(3) Shall not be served on the defendant until the court so orders.

The county may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(c) The county, for good cause shown, may move the court for extensions of the time during which the complaint remains under seal under subsection (b). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant in accordance with the Hawaii rules of civil procedure.

(d) Before the expiration of the sixty-day period or any extension obtained, the county shall:

(1) Proceed with the action, in which case the action shall be conducted by the county and the seal shall be lifted; or

(2) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action and the seal shall be lifted.

(e) When a person brings an action under this section, no person other than the county may intervene or bring a related action based on the facts underlying the pending action. [L 2001, c 227, pt of §1]

" **[§46-176] Rights of parties to qui tam actions.** (a) If a county proceeds with an action under section 46-175, the county shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the

action. The person shall have the right to continue as a party to the action, subject to the following limitations:

(1) The county may dismiss the action notwithstanding the objections of the person initiating the action if the court determines, after a hearing on the motion, that dismissal should be allowed;

(2) The county may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable. Upon a showing of good cause, the hearing may be held in camera;

(3) The court, upon a showing by the county that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the county's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, may, in its discretion, impose limitations on the person's participation by:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of the witnesses;

(C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(b) The defendant, by motion upon the court, may show that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense. At the court's discretion, the court may limit the participation by the person in the litigation.

(c) If the county elects not to proceed with the action, the person who initiated that action shall have the right to conduct the action. If the county so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the county's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the county to intervene at a later date upon showing of good cause.

(d) Regardless of whether the county proceeds with the action, upon motion and a showing by the county that certain actions of discovery by the person initiating the action would interfere with the county's investigation or prosecution of a

criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty days. The court may extend the sixty-day period upon a motion and showing by the county that the county has pursued the investigation or prosecution of the criminal or civil matter with reasonable diligence and the proposed discovery would interfere with the ongoing investigation or prosecution of the criminal or civil matter.

(e) Notwithstanding section 46-175, the county may elect to pursue its claim through any alternate remedy available to the county, including any administrative proceedings to determine civil monetary penalties. If any alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the proceedings as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that becomes final shall be conclusive on all parties to an action under this section.

(f) Regardless of whether the county elects to proceed with the action, the parties to the action shall receive court approval of any settlements reached. [L 2001, c 227, pt of §1]

" **§46-177 Awards to qui tam plaintiffs.** (a) If a county proceeds with an action brought by a person under section 46-175, the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this subsection shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(b) If a county proceeds with an action brought under section 46-171, the county may file its own complaint or amend the complaint of a person who has brought an action under

section 46-171 to clarify or add detail to the claims in which the county is intervening and to add any additional claims with respect to which the county contends it is entitled to relief. For statute of limitations purposes, any such pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the county arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(c) If the county does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five per cent and not more than thirty per cent of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(d) Regardless of whether the county proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 46-171 upon which the action was brought, then the court, to the extent the court considers appropriate, may reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of section 46-171, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the county to continue the action.

(e) If the county does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was frivolous, vexatious, or brought primarily for purposes of harassment.

(f) In no event may a person bring an action under section 46-175:

(1) Against any elected official of the county, if the action is based on evidence or information known to the county. For purposes of this section, evidence or

information known only to the person or persons against whom an action is brought shall not be considered to be known to the county; or

(2) That is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the county is already a party. [L 2001, c 227, pt of §1; am L 2012, c 294, §3]

" **§46-178 REPEALED.** L 2012, c 294, §4.

" **[§46-179] Fees and costs of litigation.** A county shall not be liable for expenses or fees, including attorney fees, that a person incurs in bringing an action under this part and shall not elect to pay those expenses or fees. [L 2001, c 227, pt of §1]

" **[§46-180] Relief from retaliatory actions.** (a) Notwithstanding any law to the contrary, any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment, contract, or agency relationship because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under section 46-175 or other efforts to stop or address any conduct described in section 46-171(a).

(b) Relief under subsection (a) shall include reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An action for relief from retaliatory actions under subsection (a) may be brought in the appropriate court of this State for the relief provided in this part.

(c) An action for relief from retaliatory actions under subsection (a) shall be brought within three years of the retaliatory conduct upon which the action is based. [L 2012, c 294, pt of §1]

" **[§46-181] Certain actions barred.** (a) In no event may a person bring an action under this part that is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which a county is already a party.

(b) The court shall dismiss an action or claim under this part, unless opposed by a county, if the allegations or transactions alleged in the action or claim are substantially the same as those publicly disclosed:

(1) In a criminal, civil, or administrative hearing in which a county or its agent is a party;

(2) In a county council or other county report, hearing, audit, or investigation; or

(3) By the news media,

unless the action is brought by the county attorney or the person bringing the action is an original source of the information.

(c) For purposes of this section, "original source" means an individual who:

(1) Prior to public disclosure under subsection (b), has voluntarily disclosed to a county the information on which the allegations or transactions in a claim are based; or

(2) Has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to a county before filing an action under this part. [L 2012, c 294, pt of §1]