

JAN 27 2021

A BILL FOR AN ACT

RELATING TO STORMWATER FEES.

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

1 SECTION 1. Section 46-1.5, Hawaii Revised Statutes is
2 amended to read as follows:

3 "**§46-1.5 General powers and limitation of the**
4 **counties.** Subject to general law, each county shall have the
5 following powers and shall be subject to the following
6 liabilities and limitations:

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

14 (2) Each county shall have the power to provide for and
15 regulate the marking and lighting of all buildings and
16 other structures that may be obstructions or hazards
17 to aerial navigation, so far as may be necessary or

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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

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- 1 responsibility may be enforced by the county in
2 lieu of the work being done at public expense;
- 3 (C) Construct, acquire by gift, purchase, or by the
4 exercise of eminent domain, reconstruct, improve,
5 better, extend, and maintain projects or
6 undertakings for the control of and protection
7 against floods and flood waters, including the
8 power to drain and rehabilitate lands already
9 flooded;
- 10 (D) Enact zoning ordinances providing that lands
11 deemed subject to seasonable, periodic, or
12 occasional flooding shall not be used for
13 residence or other purposes in a manner as to
14 endanger the health or safety of the occupants
15 thereof, as required by the Federal Flood
16 Insurance Act of 1956 (chapter 1025, Public Law
17 1016); and
- 18 (E) Establish and charge user fees to create and
19 maintain any stormwater management system or
20 infrastructure; provided that no such user fee
21 shall be charged to or payable to each county by
22 the State or any of the State's departments or

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agencies and no services shall be denied to the
State or its departments and agencies by reason
of nonpayment of such fees;

(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

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1 vehicle common carriers transporting passengers within
2 the county and adopt and amend rules the county deems
3 necessary for the public convenience and necessity;

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

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- 1 (13) Each county shall have the power to enact ordinances
2 deemed necessary to protect health, life, and
3 property, and to preserve the order and security of
4 the county and its inhabitants on any subject or
5 matter not inconsistent with, or tending to defeat,
6 the intent of any state statute where the statute does
7 not disclose an express or implied intent that the
8 statute shall be exclusive or uniform throughout the
9 State;
- 10 (14) Each county shall have the power to:
- 11 (A) Make and enforce within the limits of the county
12 all necessary ordinances covering all:
- 13 (i) Local police matters;
- 14 (ii) Matters of sanitation;
- 15 (iii) Matters of inspection of buildings;
- 16 (iv) Matters of condemnation of unsafe
17 structures, plumbing, sewers, dairies, milk,
18 fish, and morgues; and
- 19 (v) Matters of the collection and disposition of
20 rubbish and garbage;
- 21 (B) Provide exemptions for homeless facilities and
22 any other program for the homeless authorized by

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1 part XVII of chapter 346, for all matters under
2 this paragraph;

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

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

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

19 (16) Each county shall have the power to purchase and
20 otherwise acquire, lease, and hold real and personal
21 property within the defined boundaries of the county
22 and to dispose of the real and personal property as

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

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

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

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

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

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

18 (A) Community promotion and public celebrations;

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

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

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

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

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

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

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- 1 (C) Acquire, regulate, and control any and all
2 appliances for the sprinkling and cleaning of the
3 streets and the public ways, and for flushing the
4 sewers; and
- 5 (D) Open, close, construct, or maintain county
6 highways or charge toll on county highways;
7 provided that all revenues received from a toll
8 charge shall be used for the construction or
9 maintenance of county highways;
- 10 (20) Each county shall have the power to regulate the
11 renting, subletting, and rental conditions of property
12 for places of abode by ordinance;
- 13 (21) Unless otherwise provided by law, each county shall
14 have the power to establish by ordinance the order of
15 succession of county officials in the event of a
16 military or civil disaster;
- 17 (22) Each county shall have the power to sue and be sued in
18 its corporate name;
- 19 (23) Each county shall have the power to:
- 20 (A) Establish and maintain waterworks and sewer
21 works;

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- 1 (B) Implement a sewer monitoring program that
2 includes the inspection of sewer laterals that
3 connect to county sewers, when those laterals are
4 located on public or private property, after
5 providing a property owner not less than ten
6 calendar days' written notice, to detect leaks
7 from laterals, infiltration, and inflow, any
8 other law to the contrary notwithstanding;
- 9 (C) Compel an owner of private property upon which is
10 located any sewer lateral that connects to a
11 county sewer to inspect that lateral for leaks,
12 infiltration, and inflow and to perform repairs
13 as necessary;
- 14 (D) Collect rates for water supplied to consumers and
15 for the use of sewers;
- 16 (E) Install water meters whenever deemed expedient;
17 provided that owners of premises having vested
18 water rights under existing laws appurtenant to
19 the premises shall not be charged for the
20 installation or use of the water meters on the
21 premises; and

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1 (F) Take over from the State existing waterworks
2 systems, including water rights, pipelines, and
3 other appurtenances belonging thereto, and sewer
4 systems, and to enlarge, develop, and improve the
5 same;

6 (G) For purposes of subparagraphs (B) and (C):

7 (i) "Infiltration" means groundwater, rainwater,
8 and saltwater that enters the county sewer
9 system through cracked, broken, or defective
10 sewer laterals; and

11 (ii) "Inflow" means non-sewage entering the
12 county sewer system via inappropriate or
13 illegal connections;

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

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

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

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1 a part of any taxes, fees, or charges. The
2 county by ordinance may condition the issuance or
3 renewal of a license, approval, or permit for
4 which a fee or charge is assessed, except for
5 water for residential use and sewer charges, on
6 payment of the unpaid civil fines. Upon
7 recordation of a notice of unpaid civil fines in
8 the bureau of conveyances, the amount of the
9 civil fines, including any increase in the amount
10 of the fine which the county may assess, shall
11 constitute a lien upon all real property or
12 rights to real property belonging to any person
13 liable for the unpaid civil fines. The lien in
14 favor of the county shall be subordinate to any
15 lien in favor of any person recorded or
16 registered prior to the recordation of the notice
17 of unpaid civil fines and senior to any lien
18 recorded or registered after the recordation of
19 the notice. The lien shall continue until the
20 unpaid civil fines are paid in full or until a
21 certificate of release or partial release of the
22 lien, prepared by the county at the owner's

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

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

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1 violator, the case shall be reviewed by the
2 county agency that imposed the civil fines to
3 determine the appropriateness of the amount of
4 the civil fines that accrued while the appeal
5 proceedings were pending. In its review of the
6 amount of the accrued fines, the county agency
7 may consider:

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

20 The civil fine that is imposed by administrative
21 order after this review is completed and the
22 violation is corrected shall be subject to

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1 judicial review, notwithstanding any provisions
2 for administrative review in county charters;
3 (E) After completion of a review of the amount of
4 accrued civil fine by the county agency that
5 imposed the fine, the amount of the civil fine
6 determined appropriate, including both the
7 initial civil fine and any accrued daily civil
8 fine, shall immediately become due and
9 collectible following reasonable notice to the
10 violation. If no review of the accrued civil fine
11 is requested, the amount of the civil fine, not
12 to exceed the total accrual of civil fine prior
13 to correcting the violation, shall immediately
14 become due and collectible following reasonable
15 notice to the violator, at the completion of all
16 appeal proceedings; and
17 (F) If no county agency exists to conduct appeal
18 proceedings for a particular civil fine action
19 taken by the county, then one shall be
20 established by ordinance before the county shall
21 impose the civil fine;

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(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."

SECTION 2. New statutory material is underscored.

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

INTRODUCED BY:

BY REQUEST

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Report Title:

Stormwater Fees; State Exemption

Description:

Exempts the State, and its departments and agencies, from county stormwater user fees. Prohibits county from denying services to the State or its departments and agencies by reason of nonpayment of user fees.

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

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO STORMWATER FEES.

PURPOSE: To exempt the State, and its departments and agencies, from county stormwater user fees and prohibit a county from denying services to the State or its departments or agencies by reason of nonpayment of user fees.

MEANS: Amend section 46-1.5, Hawaii Revised Statutes.

JUSTIFICATION: The Department of Transportation is engaged with the protection and prudent management of the States water resources with stormwater management and recognizes biological and chemical pollutants carried by stormwaters drain into the departments ports and basins.

The City and County of Honolulu and the Department of Transportation, Highways Division have a memorandum of understanding to address interconnected stormwater systems and respective storm water permit requirements. The department also has Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System Permits for its own drainage system and comprehensive Storm Water Management Program to address permit requirements and reduce pollutant discharges to the maximum extent practical.

Impact on the public: The public may be subject to pay a fair share for stormwater infrastructure and management system.

Impact on the department and other agencies: Proposed stormwater fees would reapportion financial obligations that better serve

Department of Transportation mission
priorities.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: TRN-595.

OTHER AFFECTED
AGENCIES: City and County of Honolulu, County of Maui.

EFFECTIVE DATE: Upon approval.