
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 counties.**

4 Subject to general law, each county shall have the following
5 powers and shall be subject to the following liabilities and
6 limitations:

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

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



1 proper for the protection and safeguarding of life,
2 health, and property;

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

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

14 (5) Each county shall have the power to:
15 (A) Maintain channels, whether natural or artificial,
16 including their exits to the ocean, in suitable
17 condition to carry off storm waters;
18 (B) Remove from the channels, and from the shores and
19 beaches, any debris that is likely to create an
20 unsanitary condition or become a public nuisance;
21 provided that, to the extent any of the foregoing



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

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

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

19 (E) Establish and charge user fees to create and
20 maintain any stormwater management system or
21 infrastructure; provided that no county shall



1 charge against or collect user fees from the
 2 department of transportation in excess of
 3 \$1,500,000 in the aggregate per year; provided
 4 further that no services shall be denied to the
 5 department of transportation by reason of
 6 nonpayment of the fees;

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

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

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

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

19 (10) Except as otherwise provided, no county shall have the
 20 power to give or loan credit to, or in aid of, any



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

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

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



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

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

16 (14) Each county shall have the power to:
17 (A) Make and enforce within the limits of the county
18 all necessary ordinances covering all:
19 (i) Local police matters;
20 (ii) Matters of sanitation;
21 (iii) Matters of inspection of buildings;



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



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

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

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

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

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

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



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

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

6 (A) Community promotion and public celebrations;

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

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

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

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

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



1 wells, pipelines, and other conduits for
2 distributing water to the public, lighting
3 plants, and apparatus and appliances for lighting
4 streets and public buildings, and manage,
5 regulate, and control the same;

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

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

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

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



- 1 (21) Unless otherwise provided by law, each county shall
2 have the power to establish by ordinance the order of
3 succession of county officials in the event of a
4 military or civil disaster;
- 5 (22) Each county shall have the power to sue and be sued in
6 its corporate name;
- 7 (23) Each county shall have the power to:
- 8 (A) Establish and maintain waterworks and sewer
9 works;
- 10 (B) Implement a sewer monitoring program that
11 includes the inspection of sewer laterals that
12 connect to county sewers, when those laterals are
13 located on public or private property, after
14 providing a property owner not less than ten
15 calendar days' written notice, to detect leaks
16 from laterals, infiltration, and inflow, any
17 other law to the contrary notwithstanding;
- 18 (C) Compel an owner of private property upon which is
19 located any sewer lateral that connects to a
20 county sewer to inspect that lateral for leaks,



- 1 infiltration, and inflow and to perform repairs
2 as necessary;
- 3 (D) Collect rates for water supplied to consumers and
4 for the use of sewers;
- 5 (E) Install water meters whenever deemed expedient;
6 provided that owners of premises having vested
7 water rights under existing laws appurtenant to
8 the premises shall not be charged for the
9 installation or use of the water meters on the
10 premises; ~~and~~
- 11 (F) Take over from the State existing waterworks
12 systems, including water rights, pipelines, and
13 other appurtenances belonging thereto, and sewer
14 systems, and to enlarge, develop, and improve the
15 same; and
- 16 (G) For purposes of subparagraphs (B) and (C):
- 17 (i) "Infiltration" means groundwater, rainwater,
18 and saltwater that enters the county sewer
19 system through cracked, broken, or defective
20 sewer laterals; and



1 (ii) "Inflow" means non-sewage entering the
2 county sewer system via inappropriate or
3 illegal connections;

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

16 (B) Each county by ordinance may provide for the
17 addition of any unpaid civil fines, ordered by
18 any court of competent jurisdiction, to any
19 taxes, fees, or charges, with the exception of
20 fees or charges for water for residential use and
21 sewer charges, collected by the county. Each



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



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



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

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



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

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



1 amount of the accrued fines, the county agency
2 may consider:

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

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

20 (E) After completion of a review of the amount of
21 accrued civil fine by the county agency that



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

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

18 (25) Any law to the contrary notwithstanding, any county
 19 mayor, by executive order, may exempt donors, provider
 20 agencies, homeless facilities, and any other program
 21 for the homeless under part XVII of chapter 346 from



1 real property taxes, water and sewer development fees,
2 rates collected for water supplied to consumers and
3 for use of sewers, and any other county taxes,
4 charges, or fees; provided that any county may enact
5 ordinances to regulate and grant the exemptions
6 granted by this paragraph;

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

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

11 SECTION 2. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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



Report Title:

Stormwater Fees; Department of Transportation; Aggregate Fee Cap Amount

Description:

Establishes a fee cap amount for county stormwater user fees that may be charged against or collected from the Department of Transportation of \$1,500,000 in the aggregate per year. Prohibits any county from denying services to the Department of Transportation by reason of nonpayment of user fees. (CD1)

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