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# A BILL FOR AN ACT

RELATING TO REAL PROPERTY LIENS.

**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;



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



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



1 provided that a county may proceed with a power of  
2 sale of the property after all notices, orders, and  
3 appeal proceedings are exhausted;

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

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

- 14 (A) Make and enforce within the limits of the county  
15 all necessary ordinances covering all:  
16 (i) Local police matters;  
17 (ii) Matters of sanitation;  
18 (iii) Matters of inspection of buildings;  
19 (iv) Matters of condemnation of unsafe  
20 structures, plumbing, sewers, dairies, milk,  
21 fish, and morgues; and



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



1 the appointment, powers, duties, and fees of animal  
2 control officers;

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

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

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

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

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





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



1 plants, and apparatus and appliances for lighting  
2 streets and public buildings, and manage,  
3 regulate, and control the same;

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

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

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

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

20 (21) Unless otherwise provided by law, each county shall  
21 have the power to establish by ordinance the order of



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

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

5            (23) Each county shall have the power to:

6            (A) Establish and maintain waterworks and sewer  
7            works;

8            (B) Implement a sewer monitoring program that  
9            includes the inspection of sewer laterals that  
10           connect to county sewers, when those laterals are  
11           located on public or private property, after  
12           providing a property owner not less than ten  
13           calendar days' written notice, to detect leaks  
14           from laterals, infiltration, and inflow, any  
15           other law to the contrary notwithstanding;

16           (C) Compel an owner of private property upon which is  
17           located any sewer lateral that connects to a  
18           county sewer to inspect that lateral for leaks,  
19           infiltration, and inflow and to perform repairs  
20           as necessary;



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



1           (24) (A) Each county may impose civil fines, in addition  
2                           to criminal penalties, for any violation of  
3                           county ordinances or rules after reasonable  
4                           notice and requests to correct or cease the  
5                           violation have been made upon the violator. Any  
6                           administratively imposed civil fine shall not be  
7                           collected until after an opportunity for a  
8                           hearing under chapter 91. Any appeal shall be  
9                           filed within thirty days from the date of the  
10                          final written decision. These proceedings shall  
11                          not be a prerequisite for any civil fine or  
12                          injunctive relief ordered by the circuit court;  
13           (B) Each county by ordinance may provide for the  
14                           addition of any unpaid civil fines, ordered by  
15                           any court of competent jurisdiction, to any  
16                           taxes, fees, or charges, with the exception of  
17                           fees or charges for water for residential use and  
18                           sewer charges, collected by the county. Each  
19                           county by ordinance may also provide for the  
20                           addition of any unpaid administratively imposed  
21                           civil fines, which remain due after all judicial



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



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



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

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





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

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

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



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

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

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



1 collectible following reasonable notice to the  
2 violator. If no review of the accrued civil fine  
3 is requested, the amount of the civil fine, not  
4 to exceed the total accrual of civil fine prior  
5 to correcting the violation, shall immediately  
6 become due and collectible following reasonable  
7 notice to the violator, at the completion of all  
8 appeal proceedings[~~7~~]. After all notices,  
9 orders, and appeal proceedings are exhausted, a  
10 county may satisfy all unpaid civil fines arising  
11 from the violation of a land use law, ordinance,  
12 or rule through the power of sale on the real  
13 property subject to a recorded lien. A power of  
14 sale shall become fully effective within a county  
15 upon the enactment or adoption by the county of  
16 appropriate and particular laws, ordinances, or  
17 rules establishing the power of sale; and  
18 (F) If no county agency exists to conduct appeal  
19 proceedings for a particular civil fine action  
20 taken by the county, then one shall be



1                    established by ordinance before the county shall  
2                    impose the civil fine;

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

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

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

17        SECTION 2. Chapter 507, Hawaii Revised Statutes, is  
18        amended by adding a new part to be appropriately designated and  
19        to read as follows:

20                    **"PART            .    REAL PROPERTY**



1           **"§507-A Definitions.** As used in this part, unless a  
2 different meaning is plainly intended:

3           "Land use law" means any law, constitutional provision,  
4 statute, ordinance, or rule that regulates the use or  
5 development of land in the State, including laws related to  
6 zoning, district classification, general plan designation,  
7 permits, permitted and prohibited uses, coastal zone and  
8 shoreline management, covenants, conditions, and easements.

9           "Land use law" includes the laws found in chapters 205, 205A,  
10 343, and 508C and other laws regulating the use or development  
11 of land in the State and rules adopted pursuant thereto.

12           "Lien" means the lien provided in section 507-B.

13           "Owner" means the owner of the real property or any person  
14 having any right, title, or interest in the real property that  
15 may be sold under legal process.

16           "Person" includes natural persons, partnerships,  
17 corporations, firms, unincorporated associations, joint  
18 ventures, and any other party recognized at law as a person.

19           **§507-B Lien on real property; violation of land use laws.**

20 In addition to any other remedy provided by law, the State or  
21 any county in which the affected real property is situated may



1 attach and record a lien on the real property for any unpaid  
2 civil fines resulting from a violation of a land use law in  
3 connection with the property. Any administratively imposed  
4 civil fine for the violation shall not be collected until after  
5 an opportunity for a hearing under chapter 91. Any appeal shall  
6 be filed within thirty days from the date of the final written  
7 decision. These proceedings shall not be a prerequisite to any  
8 civil fine or injunctive relief ordered by the circuit court.  
9 After all notices, orders, and appeal proceedings, if any, are  
10 exhausted, the State or applicable county, or any agency  
11 thereof, may satisfy all unpaid civil fines arising from the  
12 violation of a land use law through the power of sale on the  
13 real property subject to the recorded lien.

14 **§507-C Priority of lien.** A lien pursuant to section 507-B  
15 arises at the time all notices, orders, and appeal proceedings,  
16 if any, are exhausted and is a paramount lien on the real  
17 property against all parties, whether their interest arose  
18 before or after that time, except that the lien:

19 (1) Shall be subordinate to any lien for a tax debt due to  
20 the State by the owner of the real property under  
21 section 231-33; and



1           (2) Shall not be valid against a mortgagee or purchaser of  
2           real property, or the lien of a judgment creditor upon  
3           the real property, whose interest arose prior to the  
4           recording by the state or county agency of the lien  
5           pursuant to section 507-B.

6           **§507-D Rule-making authority.** The state or county agency  
7           imposing civil fines for the violation of a land use law, as  
8           appropriate, may adopt rules pursuant to chapter 91 to  
9           administer this part."

10          SECTION 3. In codifying the new sections added by section  
11          2 of this Act, the revisor of statutes shall substitute  
12          appropriate section numbers for the letters used in designating  
13          the new sections in this Act.

14          SECTION 4. This Act does not affect rights and duties that  
15          matured, penalties that were incurred, and proceedings that were  
16          begun before its effective date.

17          SECTION 5. Statutory material to be repealed is bracketed  
18          and stricken. New statutory material is underscored.

19          SECTION 6. This Act shall take effect on June 30, 3000.



**Report Title:**

Civil Fines; Land Use Law Violations; Lien; Sale of Real Property; State; Counties

**Description:**

Authorizes the State and the county in which the affected real property is situated to place a lien on the property for unpaid civil fines resulting from a violation of a land use law in connection with the property. Authorizes the State and applicable county, subject to adoption of appropriate and particular laws or rules establishing the power of sale, to sell the property after all notices, orders, and appeal proceedings, if any, are exhausted and use those revenues to pay unpaid civil fines related to that property. Effective 6/30/3000. (HD1)

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

