
A BILL FOR AN ACT

RELATING TO HIGHWAYS.

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

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

"§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

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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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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; provided that no county shall charge against or collect user fees from the department of transportation in excess of

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1 \$1,500,000 in the aggregate per year; provided
2 further that no services shall be denied to the
3 department of transportation by reason of
4 nonpayment of the fees;

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

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

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

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

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

21 (11) Where not within the jurisdiction of the public
22 utilities commission, each county shall have the power

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1 to regulate by ordinance the operation of motor
2 vehicle common carriers transporting passengers within
3 the county and adopt and amend rules the county deems
4 necessary for the public convenience and necessity;

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

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

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

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

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

21 (16) Each county shall have the power to purchase and
22 otherwise acquire, lease, and hold real and personal

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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; except when the department of transportation requests the acquisition of the property for state highway purposes; 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;

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(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

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

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

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1 installation or use of the water meters on the
2 premises;

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

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

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

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

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

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1 hearing under chapter 91. Any appeal shall be
2 filed within thirty days from the date of the
3 final written decision. These proceedings shall
4 not be a prerequisite for any civil fine or
5 injunctive relief ordered by the circuit court;

6 (B) Each county by ordinance may provide for the
7 addition of any unpaid civil fines, ordered by
8 any court of competent jurisdiction, to any
9 taxes, fees, or charges, with the exception of
10 fees or charges for water for residential use and
11 sewer charges, collected by the county. Each
12 county by ordinance may also provide for the
13 addition of any unpaid administratively imposed
14 civil fines, which remain due after all judicial
15 review rights under section 91-14 are exhausted,
16 to any taxes, fees, or charges, with the
17 exception of water for residential use and sewer
18 charges, collected by the county. The ordinance
19 shall specify the administrative procedures for
20 the addition of the unpaid civil fines to the
21 eligible taxes, fees, or charges and may require
22 hearings or other proceedings. After addition of

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1 the unpaid civil fines to the taxes, fees, or
2 charges, the unpaid civil fines shall not become
3 a part of any taxes, fees, or charges. The
4 county by ordinance may condition the issuance or
5 renewal of a license, approval, or permit for
6 which a fee or charge is assessed, except for
7 water for residential use and sewer charges, on
8 payment of the unpaid civil fines. Upon
9 recordation of a notice of unpaid civil fines in
10 the bureau of conveyances, the amount of the
11 civil fines, including any increase in the amount
12 of the fine which the county may assess, shall
13 constitute a lien upon all real property or
14 rights to real property belonging to any person
15 liable for the unpaid civil fines. The lien in
16 favor of the county shall be subordinate to any
17 lien in favor of any person recorded or
18 registered prior to the recordation of the notice
19 of unpaid civil fines and senior to any lien
20 recorded or registered after the recordation of
21 the notice. The lien shall continue until the
22 unpaid civil fines are paid in full or until a

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

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

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(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.

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

6 (E) After completion of a review of the amount of
7 accrued civil fine by the county agency that
8 imposed the fine, the amount of the civil fine
9 determined appropriate, including both the
10 initial civil fine and any accrued daily civil
11 fine, shall immediately become due and
12 collectible following reasonable notice to the
13 violator. If no review of the accrued civil fine
14 is requested, the amount of the civil fine, not
15 to exceed the total accrual of civil fine prior
16 to correcting the violation, shall immediately
17 become due and collectible following reasonable
18 notice to the violator, at the completion of all
19 appeal proceedings; and

20 (F) If no county agency exists to conduct appeal
21 proceedings for a particular civil fine action
22 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. If any portion of this Act or its application
18 to any person, entity, or circumstance is held to be invalid for
19 any reason, then the legislature declares that the remainder of
20 the Act and each and every other provision thereof shall not be
21 affected thereby. If any portion of a specific appropriation is
22 held to be invalid for any reason, the remaining portion shall

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1 be expended to fulfill the objective of such appropriation to
2 the extent possible.

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

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

6
7 INTRODUCED BY:

Nedra K. Nakamura

8 BY REQUEST

JAN 21 2025

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Report Title:

Sale of Real Property; Counties

Description:

Authorizes the counties to sell or dispose of property bordering the ocean when the Department of Transportation requests the acquisition of the property for state highway purposes.

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 HIGHWAYS.

PURPOSE: To amend the counties' powers as they relate to real property to allow the sale or disposal of property bordering the ocean when requested by the Department for state highway purposes.

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

JUSTIFICATION: This bill will provide an exception to the prohibition on counties selling property bordering the ocean. Currently, counties do not have the power to sell or otherwise dispose of property bordering the ocean. This is an issue when the State needs county property for state highway purposes, including the construction, maintenance, or realignment of state highways. Property that has a state highway on it must be owned by the state and cannot be temporarily transferred or leased to the State. Many miles of state highways are close to the ocean and rising sea levels will require the relocation of existing highways or construction of new highways to replace the highways currently located along the oceanfront. This bill provides a narrow exception to allow the counties to sell property bordering the ocean if it is for state highway purposes.

Impact on the public: This bill will ensure that the public will continue to have access to a functional highway system by providing the counties the power to transfer lands necessary for the construction, maintenance, or realignment of state highways.

Impact on the department and other agencies: This bill will provide the Department with the ability to acquire county lands

necessary for a functional highway system.
All other agencies will also be able to use
the highway system.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: TRN 595.

OTHER AFFECTED
AGENCIES: County agencies that own properties that
border the ocean and that are necessary for
state highway purposes.

EFFECTIVE DATE: Upon approval.