

JAN 23 2025

A BILL FOR AN ACT

RELATING TO COUNTY USER FEES.

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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- 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 county shall
21 charge against or collect user fees from the
22 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; provided further that no
5 county shall charge or collect user fees from the
6 department of Hawaiian home lands in excess of
7 \$100,000 in the aggregate per year; provided
8 further that no services shall be denied to the
9 department of Hawaiian home lands;

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

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

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

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

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

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

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

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

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

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

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

20 (i) Local police matters;

21 (ii) Matters of sanitation;

22 (iii) Matters of inspection of buildings;

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

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

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

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

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

(15) Each county shall have the power to provide public pounds; to regulate the impounding of stray animals

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1 and fowl, and their disposition; and to provide for
2 the appointment, powers, duties, and fees of animal
3 control officers;

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

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

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

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

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

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- 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
22 plants, and apparatus and appliances for lighting

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1 streets and public buildings, and manage,

2 regulate, and control the same;

3 (B) Regulate and control the location and quality of

4 all appliances necessary to the furnishing of

5 water, heat, light, power, telephone, and

6 telecommunications service to the county;

7 (C) Acquire, regulate, and control any and all

8 appliances for the sprinkling and cleaning of the

9 streets and the public ways, and for flushing the

10 sewers; and

11 (D) Open, close, construct, or maintain county

12 highways or charge toll on county highways;

13 provided that all revenues received from a toll

14 charge shall be used for the construction or

15 maintenance of county highways;

16 (20) Each county shall have the power to regulate the

17 renting, subletting, and rental conditions of property

18 for places of abode by ordinance;

19 (21) Unless otherwise provided by law, each county shall

20 have the power to establish by ordinance the order of

21 succession of county officials in the event of a

22 military or civil disaster;

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

(23) Each county shall have the power to:

(A) Establish and maintain waterworks and sewer works;

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

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

(D) Collect rates for water supplied to consumers and for the use of sewers; provided that no county shall charge against or collect user fees from the department of Hawaiian home lands in excess

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1 of \$100,000 in the aggregate per year; provided
2 further that no service shall be denied to the
3 department of Hawaiian home lands;

4 (E) Install water meters whenever deemed expedient;
5 provided that owners of premises having vested
6 water rights under existing laws appurtenant to
7 the premises shall not be charged for the
8 installation or use of the water meters on the
9 premises;

10 (F) Take over from the State existing waterworks
11 systems, including water rights, pipelines, and
12 other appurtenances belonging thereto, and sewer
13 systems, and to enlarge, develop, and improve the
14 same; and

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

16 (i) "Infiltration" means groundwater, rainwater,
17 and saltwater that enters the county sewer
18 system through cracked, broken, or defective
19 sewer laterals; and

20 (ii) "Inflow" means non-sewage entering the
21 county sewer system via inappropriate or
22 illegal connections;

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1 (24) (A) Each county may impose civil fines, in
2 addition to criminal penalties, for any violation
3 of 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
22 review rights under section 91-14 are exhausted,

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

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1 favor of the county shall be subordinate to any
2 lien in favor of any person recorded or
3 registered prior to the recordation of the notice
4 of unpaid civil fines and senior to any lien
5 recorded or registered after the recordation of
6 the notice. The lien shall continue until the
7 unpaid civil fines are paid in full or until a
8 certificate of release or partial release of the
9 lien, prepared by the county at the owner's
10 expense, is recorded. The notice of unpaid civil
11 fines shall state the amount of the fine as of
12 the date of the notice and maximum permissible
13 daily increase of the fine. The county shall not
14 be required to include a social security number,
15 state general excise taxpayer identification
16 number, or federal employer identification number
17 on the notice. Recordation of the notice in the
18 bureau of conveyances shall be deemed, at such
19 time, for all purposes and without any further
20 action, to procure a lien on land registered in
21 land court under chapter 501. After the unpaid
22 civil fines are added to the taxes, fees, or

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1 charges as specified by county ordinance, the
2 unpaid civil fines shall be deemed immediately
3 due, owing, and delinquent and may be collected
4 in any lawful manner. The procedure for
5 collection of unpaid civil fines authorized in
6 this paragraph shall be in addition to any other
7 procedures for collection available to the State
8 and county by law or rules of the courts;

9 (C) Each county may impose civil fines upon any
10 person who places graffiti on any real or
11 personal property owned, managed, or maintained
12 by the county. The fine may be up to \$1,000 or
13 may be equal to the actual cost of having the
14 damaged property repaired or replaced. The
15 parent or guardian having custody of a minor who
16 places graffiti on any real or personal property
17 owned, managed, or maintained by the county shall
18 be jointly and severally liable with the minor
19 for any civil fines imposed hereunder. Any such
20 fine may be administratively imposed after an
21 opportunity for a hearing under chapter 91, but
22 such a proceeding shall not be a prerequisite for

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any civil fine ordered by any court. As used in this subparagraph, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances;

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

- (i) The nature and egregiousness of the violation;
- (ii) The duration of the violation;
- (iii) The number of recurring and other similar violations;
- (iv) Any effort taken by the violator to correct the violation;

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- 1 (v) The degree of involvement in causing or
2 continuing the violation;
3 (vi) Reasons for any delay in the completion of
4 the appeal; and
5 (vii) Other extenuating circumstances.

6 The civil fine that is imposed by administrative
7 order after this review is completed and the
8 violation is corrected shall be subject to
9 judicial review, notwithstanding any provisions
10 for administrative review in county charters;
11 (E) After completion of a review of the amount of
12 accrued civil fine by the county agency that
13 imposed the fine, the amount of the civil fine
14 determined appropriate, including both the
15 initial civil fine and any accrued daily civil
16 fine, shall immediately become due and
17 collectible following reasonable notice to the
18 violation. If no review of the accrued civil fine
19 is requested, the amount of the civil fine, not
20 to exceed the total accrual of civil fine prior
21 to correcting the violation, shall immediately
22 become due and collectible following reasonable

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notice to the violator, at the completion of all

appeal proceedings; and

(F) If no county agency exists to conduct appeal

proceedings for a particular civil fine action

taken by the county, then one shall be

established by ordinance before the county shall

impose the civil fine;

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

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

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

SECTION 2. New statutory material is underscored.

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

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INTRODUCED BY: 

4

BY REQUEST

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Report Title:

DHHL; Counties; User Fees; County Powers

Description:

Exempts the Department of Hawaiian Home Lands from county user fees, in the amount of \$100,000 aggregate per year, and ensures county services to the Department of Hawaiian Home Lands for Hawaiian Home Lands.

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: Hawaiian Home Lands

TITLE: A BILL FOR AN ACT RELATING TO COUNTY USER FEES.

PURPOSE: To exempt the Department from county user fees in excess of \$100,000 in the aggregate per year, while ensuring county services to the Department continue for Hawaiian Home Lands.

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

JUSTIFICATION: The Department pays county user fees that are in excess of \$100,000 in the aggregate per year. Funds saved by the Department due to exemption from county user fees could be used for infrastructure and housing needs for Hawaiian Home Lands managed by the Department.

Impact on the public: This bill advances the interest of beneficiaries of the Hawaiian Homes Commission Act, 1920, as amended, by ensuring that the Department will be exempt from county user fees in excess of \$100,000 and ensuring county services to the Department for Hawaiian Home Lands will not be denied. Due to the amount of lands under the jurisdiction of the Department, the county user fees have an excessive impact upon the Department. This bill would reduce the impact of county user fees on the Department, thereby making more funds available to be used for infrastructure and housing needs.

Impact on the department and other agencies: Hawaii counties would receive less revenue in the form of county user fees charged to the Department of Hawaiian Home Lands.

GENERAL FUND: None.

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OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HHL 625.

OTHER AFFECTED
AGENCIES: Counties within the State of Hawaii.

EFFECTIVE DATE: Upon approval.