

ACT 263

S.B. NO. 546

A Bill for an Act Relating to Counties.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature concurs with Attorney General Opinion No. 87-1, dated March 3, 1987, that “repeal of the special and local laws pertaining to the powers of specific counties, as found in Chapters 61 through 70, Hawaii Revised Statutes, and their replacement with grants of general powers which would have uniform operation in all counties of the State will not violate Article VIII, Section 1, which requires that powers of political subdivisions be conferred under general laws. The purpose of this bill is to promote the uniformity by replacing special and local laws with grants of general powers that apply to all counties.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- 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, which 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 which may be obstructions or hazards to aerial navigation, so far as may be necessary or 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 maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters; and to remove from the channels, and from the shores and beaches, any debris which is likely to create an unsan-

itary condition or to otherwise become a public nuisance; provided that to the extent any of the foregoing work is a private responsibility the responsibility may be enforced by the county in lieu of the work being done at public expense. Counties shall also have the power to 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, and to enact zoning ordinances providing that lands deemed subject to seasonable or periodic, or occasional flooding shall not be used for residence or other purposes in such 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).

- (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so.
- (7) Each county shall have the power to exercise such regulatory powers over business activity as are assigned to them by chapter 445, or other general law.
- (8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for.
- (9) Each county shall have the power to provide by ordinance for the improvement or maintenance assessments of districts within the county.
- (10) Except as otherwise provided, each county shall have the power to, in any manner give or loan credit to, or in aid of, any person or corporation, and any indebtedness or liability incurred contrary to this paragraph shall be void.
- (11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend such rules as the county deems necessary for the public convenience and necessity.
- (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove nuisances, and compel the clearing of refuse and uncultivated undergrowth from unoccupied lots, and in these connections impose and enforce liens upon the property for the cost to the county of completing the necessary work where the owners fail after reasonable notice to comply with the ordinances.
- (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and 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, provided also that the statute does not disclose or express an implied intent that the statute shall be exclusive or uniform throughout the State.
- (14) Each county shall have the power to make and enforce within the limits of the county all necessary ordinances covering all local police matters and all matters of sanitation, inspection of buildings, condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues, and the collection and disposition of rubbish and garbage, to appoint county physicians and such sanitary and other inspectors as may be 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 such limitations as may be placed on them by the terms and conditions of their appointments, and to fix a penalty for the violations 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 and fowl, and their disposition, and to provide for the appointment, powers, duties, and fees of animal control officers.
 - (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal 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 any property held for school purposes may not be disposed of without the consent of the superintendent of education, that no property bordering the ocean shall be sold or otherwise disposed of, and that 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 community promotion and public celebrations, the entertainment of such distinguished persons as may from time to time visit the county, for the entertainment of other distinguished persons as well as public officials when deemed to be in the best interest of the community, and 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, water works, 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 water, heat, light, power, telephonic, and telegraphic service to the county; and
 - (C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways and for flushing the sewers.
 - (20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance.
 - (21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military civil disaster.
 - (22) Each county shall have the power to sue and be sued in its corporate name.
 - (23) Each county shall have the power to establish and maintain water works and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take

- over from the State existing water works systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same.
- (24) Each county may impose civil fines, in addition to criminal penalties, for any building or zoning code violation after reasonable notice and requests to correct the violation have been made upon the violator."

SECTION 3. Section 64-61, Hawaii Revised Statutes, is renumbered appropriately to read as follows:

"[§64-61] §323- Establishment of the Hilo Hospital. The Puumaile Hospital and the Hilo Memorial Hospital in the county of Hawaii are hereby combined into a single organization to be known as the "Hilo Hospital." "

SECTION 4. Section 65-11, Hawaii Revised Statutes, is renumbered appropriately to read as follows:

"[§65-11] §323- Kauai Veterans Memorial Hospital. There shall be at Waimea, Kauai, a hospital to be known as the Kauai Veterans Memorial Hospital. The hospital shall serve also as a health center for the county of Kauai and shall among its other functions conduct, insofar as its resources will permit, outpatient clinics for residents of Kauai in need of these services."

SECTION 5. Section 65-13, Hawaii Revised Statutes, is renumbered appropriately to read as follows:

"[§65-13] §323- Samuel Mahelona Memorial Hospital; public institution. The Samuel Mahelona Memorial Hospital is hereby designated to be and is established as a public institution."

SECTION 6. Section 66-11, Hawaii Revised Statutes, is renumbered appropriately to read as follows:

"[§66-11] §323- Maui Community Hospitals. Those institutions known as the Hana Medical Center and the Maui Memorial Hospital are hereby declared to constitute the Maui Community Hospitals."

SECTION 7. Section 70-111, Hawaii Revised Statutes, is renumbered appropriately to read as follows:

"[§70-111] §46- Public land or land exempt from taxation, etc.; cost otherwise assessable against borne by city and county. Whenever (1) any public land, except lands owned by the board of water supply, or (2) any land by law exempted from improvement assessments, or (3) any land exempted by law from payment of property taxes which land is owned by a society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes, whose charter or other enabling act contains a provision that, in the event of dissolution, the land owned by such society, association, or corporation and herein exempted from assessments shall be distributed to another society, association, or corporation engaged in religious, charitable, educational, scientific, literary, or other benevolent purposes, forms part of any improvement district or fronts upon any street, alley, or other highway to be opened or improved or along which a storm drainage system or street lighting system is to be constructed or improved independently and would, if privately owned or not exempt from such

assessment, be subject to assessment, the city council shall, nevertheless, without assessing such public or exempted land for any part of the cost of such improvements, by general ordinance appropriate and pay toward such improvements out of general revenues the portion of the cost thereof which would otherwise be assessable against the same in a lump sum or, at the election of the council, in such equal installments and with such interest thereon as the council shall determine. In the event, however, any part or parts of such exempt lands as described in the preceding sentence, except public lands, may be required for right-of-way or easement purposes within such improvement districts the value thereof shall be chargeable to the improvement district, and upon acquisition the owner shall be compensated therefor in the following manner:

- (1) Where the value of the part taken together with any severance damages exceeds the portion of the cost of the improvements which would otherwise be assessable against the exempt land, the county shall pay the difference to the owner or owners;
- (2) Where the value is less than the portion of the cost of improvements which would otherwise be assessable against such exempt lands, the value of the land shall be deducted therefrom and the county shall pay the balance of the assessment as provided herein.

With respect to any proposed improvement where any part of the cost is thus to be borne by the city and county, the council shall have the same right of approval or protest as though the city and county were the private owner of the public or exempted land so involved. As to such expenditures for public and exempt lands, the city and county shall be entitled to be reimbursed out of state revenues by appropriations to be made from time to time by the legislature to the extent of fifty per cent of all assessments regularly apportioned against persons, corporations, or entities, which are part of any improvement district or frontage improvement and are exempted by law from the payment of such assessments. The city and county shall be entitled to be likewise reimbursed for the full amount of assessments regularly apportioned against public lands which are a part of any improvement district or frontage improvement, which public lands are owned in fee simple by the United States, or by the State, and which are not set aside for city and county parks, or for other city and county purposes or for street areas or frontages; provided that as to the University of Hawaii, Kapiolani park, including the Waikiki parks established by the laws of 1905, chapter 103, section 1, the city and county shall be entitled to full reimbursement for improvement assessments; and provided further that in case any land exempted by law from assessments as herein provided, other than public land, or any part thereof, is sold or leased after the establishment of a frontage improvement or an improvement district, the grantee, in the one case and the lessor in the other, shall assume the payment of assessments from the date of such sale or lease in the same manner as if the property had not been exempted from assessments and as if assessments proportionable against the property had been paid in installments to such date of sale or lease; and that all payments received from such grantee or lessor, as the case may be, shall be paid into the permanent improvement fund. Nothing in this section shall be taken to prejudice any rights of the State to reimbursement from the United States for assessments herein assumed by the State, but the latter shall be subrogated to the rights of the city and county on such assessments so assumed."

SECTION 8. Sections 70-121 and 70-122, Hawaii Revised Statutes, are renumbered appropriately and amended to read as follows:

"[§70-121] §46- Thomas Square; to be maintained. Thomas Square shall be maintained as a public park [and the city council of the city and county of Honolulu is prohibited from extending Young street through it].

[§70-122] §46- Ala Wai golf course. The fair commission of Hawaii is abolished and the functions and authority of the fair commission of Hawaii relating to the Ala Wai golf course are transferred to the city and county of Honolulu, together with the use and control of all lands, property, and facilities under its jurisdiction; provided that the lands, property, and facilities shall be used [solely] for the purposes of operating a municipal golf course; and provided further that the governor may by executive order transfer the use and control of the lands, property, and facilities to the appropriate department of the State designated by the governor upon the giving of one year's written notice before the date of the transfer back to the State to the city and county of Honolulu."

SECTION 9. Section 265A-1, Hawaii Revised Statutes, is amended to read as follows:

"[§265A-1] County authority. The several councils or other governing bodies of the several political subdivisions of the State shall have the general supervision, charge, and control of, and the duty to maintain and repair, all county highways, bikeways, and sidewalks and shall have the power to determine the terms under which irrigation or drainage ditches, flumes, railroads, including plantation railroads and similar structures, telephone, electric light and power lines and pipes and other conduits may be maintained upon, under, over, and across the same, and the councils or other governing bodies may make all regulations needful for the public convenience and safety in all cases where permission has been or may be granted to maintain the ditches, railroads, pipes, or other structures across, under, over, and upon all county highways. Any other law to the contrary notwithstanding, the several counties by ordinance may take over, or receive by dedication or otherwise, any private street or way or may improve, grade, repair, or do any construction work upon private streets, ways, pavement, water lines, street lighting systems, or sewer repairs."

SECTION 10. Section 326-34, Hawaii Revised Statutes, is amended to read as follows:

"§326-34 County of Kalawao [governed by department of health.]; governance. (a) The county of Kalawao shall consist of that portion of the island of Molokai known as Kalaupapa, Kalawao, and Waikolu, and commonly known or designated as the Kalaupapa Settlement, and shall not be or form a portion of the county of Maui, but is constituted a county by itself. As a county it shall have only the powers especially conferred and given by sections 326-34 to 326-38 and, except as provided in those sections, none of the provisions of the Hawaii Revised Statutes regarding counties shall be deemed to refer to or shall be applicable to the county of Kalawao.

(b) The county of Kalawao shall be under the jurisdiction and control of the department of health and be governed by the laws, and rules[, and regulations] relating to the department and the care and treatment of persons affected with Hansen's disease, except as otherwise provided by law."

SECTION 11. Chapters 61, 62, 64, 65, 66, 67, and 70, Hawaii Revised Statutes, are repealed.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved June 13, 1988.)

Note

1. Edited pursuant to HRS §23G-16.5.