

ACT 171

H.B. NO. 2294

A Bill for an Act Relating to the Counties.

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

SECTION 1. Act 263, Session Laws of Hawaii 1988, repealed a number of chapters of the Hawaii Revised Statutes that had established provisions specific to particular counties of the State and consolidated many statutory provisions relating to the counties in chapter 46, Hawaii Revised Statutes, a chapter applicable generally to all the counties of the State.

Section 46-1.5(10), Hawaii Revised Statutes, as enacted by Act 263, Session Laws of Hawaii 1988, authorized the counties to give or loan their credit in aid of any person or corporation. This provision failed to recognize the limitation of Article VII, section 4, of the Hawaii State Constitution, which provides in part: "nor shall the public credit be used, directly or indirectly, except for a public purpose."

The provisions of section 46-1.5(13), Hawaii Revised Statutes, relating to the general police powers of the counties, included the original provision contained in the former section 70-105, Hawaii Revised Statutes. That section included a limitation recognizing that the counties' police powers are subject to preemption by state statutes that are intended to be exclusive or uniform throughout the State.

However, when enacting Act 212, Session Laws of Hawaii 1991, relating to assistance to homeless families, the language of section 46-1.5(13), Hawaii Revised Statutes, was altered. The new version substitutes the word "ordinance" for "statute", thus creating the confusing sentence that each county may enact ordinances to protect health, life, and property as long as the ordinance does not conflict with the intent of any state statute and the ordinance does not express an intent to be exclusive or uniform throughout the State. As ordinances are limited to individual counties, this substitution appears clearly to be an error.

The purpose of this Act is to:

- (1) Correct technical errors in section 46-1.5, Hawaii Revised Statutes, and conform to the intent of that section; and
- (2) Provide the counties with the authority to abate public nuisances.

SECTION 2. Section 46-15.6, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Public nuisances” shall include but not be limited to the placement of structures, stalls, stands, furniture, and containers on streets, sidewalks, and public places where the placement of structures, stalls, stands, furniture, and containers are inconsistent with or frustrate the purpose, function, or activity for which the street, sidewalk, or public place was intended.”

SECTION 3. 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, 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 that 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 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 responsibility may be enforced by the county in lieu of the work being done at public expense. Counties also shall 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, 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).

- (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 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] no county shall have the power to give or loan credit [in any manner] to, or in aid of, any person or corporation, [and any indebtedness or liability incurred contrary to this paragraph shall be void.] directly or indirectly, except for a public purpose.
- (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 rules 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 public nuisances and to compel the clearing or removal of any public nuisance, refuse, and uncultivated undergrowth from streets, sidewalks, public places, and unoccupied lots, and in these connections, to impose and enforce liens upon the property for the cost to the county of removing and completing the necessary work where the owners fail, after reasonable notice, to comply with the ordinances. The authority provided by this paragraph shall not be self-executing, but shall become fully effective within a county only upon the enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "public nuisances" with respect to each county's respective 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, provided also that the [ordinance] statute does not disclose [or] an express [an] or implied intent that the [ordinance] 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; all matters of sanitation; all matters of inspection of buildings; all matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; all matters of the collection and disposition of rubbish and garbage; and to provide

exemptions for homeless facilities and any other program for the homeless authorized by chapter 358D, for all matters under this paragraph; and to 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 to 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 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; no property bordering the ocean shall be sold or otherwise disposed of; and 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 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, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, [water works,] 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 water, heat, light, power, telephonic, and telegraphic service to the county;
  - (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; and
  - (D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received

from a toll charge shall be used for the construction or maintenance of county highways.

- (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 or 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 waterworks 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 waterworks systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same.
- (24) (A) Each county may impose civil fines, in addition to criminal penalties, for any violation of county ordinances or rules after reasonable notice and requests to correct or cease the violation have been made upon the violator. Any civil fine may be administratively imposed after an opportunity for a hearing under chapter 91. Such a proceeding shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court.
- (B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the taxes, fees, or charges and may require hearings or other proceedings. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing and delinquent and may be collected in the same manner as the taxes, fees, or charges. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts.
- (25) Any law to the contrary notwithstanding, any county mayor may exempt by executive order donors, provider agencies, homeless facilities, and any other program for the homeless under chapter 358D 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."

## ACT 171

SECTION 4. Act 168, Session Laws of Hawaii 1993, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that on June 30, 1996, [this Act] section 46-1.5(24)(B), Hawaii Revised Statutes, shall be repealed and [section 46-1.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.] the subparagraph designation for section 46-1.5(24)(A) shall be repealed.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 1994.

(Approved June 21, 1994.)