

---

---

# A BILL FOR AN ACT

RELATING TO GRAFFITI.

**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; and  
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);  
19 (6) Each county shall have the power to exercise the power  
20 of condemnation by eminent domain when it is in the  
21 public interest to do so;



# H.B. NO. 639

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



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

18 (13) Each county shall have the power to enact ordinances  
19 deemed necessary to protect health, life, and  
20 property, and to preserve the order and security of  
21 the county and its inhabitants on any subject or



1 matter not inconsistent with, or tending to defeat,  
2 the intent of any state statute where the statute does  
3 not disclose an express or implied intent that the  
4 statute shall be exclusive or uniform throughout the  
5 State;

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

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

9 (i) Local police matters;

10 (ii) Matters of sanitation;

11 (iii) Matters of inspection of buildings;

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

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

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



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

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

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

17 (16) Each county shall have the power to purchase and  
18 otherwise acquire, lease, and hold real and personal  
19 property within the defined boundaries of the county  
20 and to dispose of the real and personal property as



1 the interests of the inhabitants of the county may  
2 require, except that:

3 (A) Any property held for school purposes may not be  
4 disposed of without the consent of the  
5 superintendent of education;

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

8 (C) All proceeds from the sale of park lands shall be  
9 expended only for the acquisition of property for  
10 park or recreational purposes;

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

15 (18) Each county shall have the power to make  
16 appropriations in amounts deemed appropriate from any  
17 moneys in the treasury, for the purpose of:

18 (A) Community promotion and public celebrations;

19 (B) The entertainment of distinguished persons as may  
20 from time to time visit the county;





1 (C) The entertainment of other distinguished persons,  
2 as well as, public officials when deemed to be in  
3 the best interest of the community; and

4 (D) The rendering of civic tribute to individuals  
5 who, by virtue of their accomplishments and  
6 community service, merit civic commendations,  
7 recognition, or remembrance;

8 (19) Each county shall have the power to:

9 (A) Construct, purchase, take on lease, lease,  
10 sublease, or in any other manner acquire, manage,  
11 maintain, or dispose of buildings for county  
12 purposes, sewers, sewer systems, pumping  
13 stations, waterworks, including reservoirs,  
14 wells, pipelines, and other conduits for  
15 distributing water to the public, lighting  
16 plants, and apparatus and appliances for lighting  
17 streets and public buildings, and manage,  
18 regulate, and control the same;

19 (B) Regulate and control the location and quality of  
20 all appliances necessary to the furnishing of



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;



1           (23) Each county shall have the power to establish and  
2           maintain waterworks and sewer works; to collect rates  
3           for water supplied to consumers and for the use of  
4           sewers; to install water meters whenever deemed  
5           expedient; provided that owners of premises having  
6           vested water rights under existing laws appurtenant to  
7           the premises shall not be charged for the installation  
8           or use of the water meters on the premises; to take  
9           over from the State existing waterworks systems,  
10          including water rights, pipelines, and other  
11          appurtenances belonging thereto, and sewer systems,  
12          and to enlarge, develop, and improve the same;

13          (24) (A) Each county may impose civil fines, in addition  
14          to criminal penalties, for any violation of  
15          county ordinances or rules after reasonable  
16          notice and requests to correct or cease the  
17          violation have been made upon the violator. Any  
18          administratively imposed civil fine shall not be  
19          collected until after an opportunity for a  
20          hearing under chapter 91. Any appeal shall be  
21          filed within thirty days from the date of the

1 final written decision. These proceedings shall  
2 not be a prerequisite for any civil fine or  
3 injunctive relief ordered by the circuit court;  
4 (B) Each county by ordinance may provide for the  
5 addition of any unpaid civil fines, ordered by  
6 any court of competent jurisdiction, to any  
7 taxes, fees, or charges, with the exception of  
8 fees or charges for water for residential use and  
9 sewer charges, collected by the county. Each  
10 county by ordinance may also provide for the  
11 addition of any unpaid administratively imposed  
12 civil fines, which remain due after all judicial  
13 review rights under section 91-14 are exhausted,  
14 to any taxes, fees, or charges, with the  
15 exception of water for residential use and sewer  
16 charges, collected by the county. The ordinance  
17 shall specify the administrative procedures for  
18 the addition of the unpaid civil fines to the  
19 eligible taxes, fees, or charges and may require  
20 hearings or other proceedings. After addition of  
21 the unpaid civil fines to the taxes, fees, or



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



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



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~~  
7                   \$1,500 or may be equal to the actual cost of  
8                   having the damaged property repaired or replaced.  
9                   The parent or guardian having custody of a minor  
10                  who places graffiti on any real or personal  
11                  property owned, managed, or maintained by the  
12                  county shall be jointly and severally liable with  
13                  the minor for any civil fines imposed hereunder.  
14                  Any such fine may be administratively imposed  
15                  after an opportunity for a hearing under chapter  
16                  91, but such a proceeding shall not be a  
17                  prerequisite for any civil fine ordered by any  
18                  court. As used in this subparagraph, "graffiti"  
19                  means any unauthorized drawing, inscription,  
20                  figure, or mark of any type intentionally created  
21                  by paint, ink, chalk, dye, or similar substances;



- 1 (D) At the completion of an appeal in which the  
2 county's enforcement action is affirmed and upon  
3 correction of the violation if requested by the  
4 violator, the case shall be reviewed by the  
5 county agency that imposed the civil fines to  
6 determine the appropriateness of the amount of  
7 the civil fines that accrued while the appeal  
8 proceedings were pending. In its review of the  
9 amount of the accrued fines, the county agency  
10 may consider:
- 11 (i) The nature and egregiousness of the  
12 violation;
  - 13 (ii) The duration of the violation;
  - 14 (iii) The number of recurring and other similar  
15 violations;
  - 16 (iv) Any effort taken by the violator to correct  
17 the violation;
  - 18 (v) The degree of involvement in causing or  
19 continuing the violation;
  - 20 (vi) Reasons for any delay in the completion of  
21 the appeal; and





1 (vii) Other extenuating circumstances.

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

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



1 (F) If no county agency exists to conduct appeal  
2 proceedings for a particular civil fine action  
3 taken by the county, then one shall be  
4 established by ordinance before the county shall  
5 impose the civil fine;

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

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

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

20 SECTION 2. Section 708-823.6, Hawaii Revised Statutes, is  
21 amended by amending subsection (1) to read as follows:



1           " (1) Whenever a person is sentenced under section 708-821,  
2 708-822, 708-823, or 708-823.5 for an offense in which the  
3 damage is caused by graffiti, in addition to any penalty  
4 prescribed by those sections, the person shall be required to:

5           (a) Pay a fine of not more than \$1,500;

6           ~~[(a)]~~ (b) Remove the graffiti from the damaged property  
7 within thirty days of sentencing, if it has not  
8 already been removed and where consent from the  
9 respective property owner or owners has been obtained;  
10 and

11           ~~[(b)]~~ (c) For a period of time not to exceed two years from  
12 the date of sentencing, along with any other person or  
13 persons who may be sentenced under this section for  
14 the same property, perform community service removing,  
15 within fourteen days, any graffiti applied to other  
16 property within two hundred fifty yards of the site of  
17 the offense for which the person was sentenced, where  
18 consent from the respective property owner or owners  
19 has been obtained, even if the property was damaged by  
20 another person;



1 provided that removal of graffiti shall not place the person or  
2 others in physical danger nor inconvenience the public."

3 SECTION 3. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

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

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

9

INTRODUCED BY:

Calvin K. Ay  
Kal Rumb

JAN 23 2015



# H.B. NO. 639

**Report Title:**

Graffiti; Fines

**Description:**

Increases civil and criminal fines for causing property damage by graffiti.

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

