
A BILL FOR AN ACT

RELATING TO EMINENT DOMAIN.

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

1 SECTION 1. In the wake of the recent United States Supreme
2 Court decision in *Kelo v. New London* (04-108), June 23, 2005,
3 there has been a growing concern that the need for urban renewal
4 or economic development may be cited as justification for
5 allowing government, directly or vicariously through other
6 entities, to condemn private property and transfer the property
7 to the benefit of another private person or entity.

8 The purpose of this Act is to prohibit the exercise of
9 eminent domain by the State, counties, or private entities for
10 urban renewal or economic development purposes that would result
11 in the development of any nongovernmental retail, office,
12 commercial, residential, or industrial development or use;
13 provided that this prohibition shall not apply to developments
14 determined to be integral and required elements of public
15 purpose projects.

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



1 "§46- No eminent domain for economic development
2 purposes. Notwithstanding any law to the contrary, no county or
3 any of its departments, agencies, commissions, authorities, or
4 any private entity may take any interest in or damage any
5 private property through the use of eminent domain if the taking
6 is for the purpose of urban or economic development that would
7 result in the development of any nongovernmental retail, office,
8 commercial, residential, or industrial development or use;
9 provided that this prohibition shall not apply to developments
10 that are determined by the governing authority to be integral
11 and required elements of public purpose projects, including but
12 not limited to affordable housing, shelters for the homeless,
13 schools, hospitals, disaster preparedness or renewal projects,
14 and mass transit systems."

15 SECTION 3. Section 101-2, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§101-2 Taking private property for public use; disposal**
18 **of excess property[-]; public use. (a)** Private property may be
19 taken for public use. Private property may also be taken by the
20 State or any county in excess of that needed for such public use
21 in cases where small remnants would otherwise be left or where
22 other justifiable cause necessitates such taking to protect and

1 preserve the contemplated improvement, or public policy demands
2 such taking in connection with the improvement, in which case
3 the condemning authority may sell or lease such excess property,
4 with such restrictions as may be dictated by considerations of
5 public policy [~~in order~~] to protect and preserve such
6 improvements; provided that in the disposal of any such excess
7 property, if such property is less than the minimum lot size
8 requirements of the applicable zoning regulations, is of a
9 configuration or topography which in the judgment of the
10 appropriate county zoning authority cannot be put to a
11 reasonable use in accordance with the applicable zoning
12 regulations, or lacks proper access to a street, it shall be
13 offered to the owner or owners of the abutting land for a
14 reasonable price based on an appraisal; provided further that if
15 such excess property conforms to said minimum lot size
16 requirements, is of a configuration and topography which in the
17 judgment of the appropriate county zoning authority can be put
18 to a reasonable use in accordance with the applicable zoning
19 regulations and has proper access to a street, then the State or
20 the county, as the case may be, may sell such property at public
21 auction. If there is more than one abutting owner who is
22 interested in purchasing any such excess property which is less



1 than the minimum lot size requirements of the applicable zoning
2 regulations, is of a configuration or topography which in the
3 judgment of the appropriate county zoning authority cannot be
4 put to a reasonable use in accordance with applicable zoning
5 regulations, or lacks proper access to a street, it shall be
6 sold by the condemning authority by sealed bid to the abutting
7 owner submitting the highest offer above the appraised value;
8 provided further that if any such excess property abuts more
9 than one parcel, the condemning authority may make application
10 for subdividing such property so that a portion thereof may be
11 sold to each abutting owner at the appraised value if the public
12 interest is best served by such subdivision and disposal. All
13 moneys received from the sale or lease of such excess property
14 shall be paid into the fund or appropriation from which money
15 was taken for the original condemnation and shall be available
16 for the purposes of such fund or appropriation.

17 (b) Notwithstanding any law to the contrary, for purposes
18 of this chapter, "public use" shall not include any use of
19 property that is for urban or economic development that would
20 result in the development of any nongovernmental retail, office,
21 commercial, residential, or industrial development or use;
22 provided that "public use" shall include developments that are

1 determined by the governing authority to be integral and
2 required elements of public purpose projects, including but not
3 limited to affordable housing, shelters for the homeless,
4 schools, hospitals, disaster preparedness or renewal projects,
5 and mass transit systems."

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

9 SECTION 5. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 2020.



Report Title:

Eminent Domain; Urban and Economic Development; Prohibition

Description:

Prohibits the exercise of eminent domain by the State, counties, or private entities for urban renewal or economic development purposes that result in the development of nongovernmental retail, office, commercial, residential, or industrial development. Exempts developments integral and required for public purpose projects from this prohibition. (HB2135 HD1)

