
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 the
9 power of eminent domain to take private property and transfer
10 the property to another private entity for urban renewal or
11 economic development purposes that would result in the
12 development of any nongovernmental retail, office, commercial,
13 residential or industrial development or use.

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

17 "§46- No eminent domain for economic development
18 purposes. Anything to the contrary notwithstanding, no county



1 or any of its departments, agencies, commissions, authorities,
2 or any private entity may take any interest in or damage any
3 private property through the use of eminent domain if the taking
4 is for the purpose of urban or economic development that would
5 result in the development of any nongovernmental retail, office,
6 commercial, residential, or industrial development or use."

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

9 **"§101-2 Taking private property for public use; disposal**
10 **of excess property[-]; public use.** (a) Private property may be
11 taken for public use. Private property may also be taken by the
12 State or any county in excess of that needed for such public use
13 in cases where small remnants would otherwise be left or where
14 other justifiable cause necessitates such taking to protect and
15 preserve the contemplated improvement, or public policy demands
16 such taking in connection with the improvement, in which case
17 the condemning authority may sell or lease such excess property,
18 with such restrictions as may be dictated by considerations of
19 public policy in order to protect and preserve such
20 improvements; provided that in the disposal of any such excess
21 property, if such property is less than the minimum lot size
22 requirements of the applicable zoning regulations, is of a



1 configuration or topography which in the judgment of the
2 appropriate county zoning authority cannot be put to a
3 reasonable use in accordance with the applicable zoning
4 regulations, or lacks proper access to a street, it shall be
5 offered to the owner or owners of the abutting land for a
6 reasonable price based on an appraisal; provided further that if
7 such excess property conforms to said minimum lot size
8 requirements, is of a configuration and topography which in the
9 judgment of the appropriate county zoning authority can be put
10 to a reasonable use in accordance with the applicable zoning
11 regulations and has proper access to a street, then the State or
12 the county, as the case may be, may sell such property at public
13 auction. If there is more than one abutting owner who is
14 interested in purchasing any such excess property which is less
15 than the minimum lot size requirements of the applicable zoning
16 regulations, is of a configuration or topography which in the
17 judgment of the appropriate county zoning authority cannot be
18 put to a reasonable use in accordance with applicable zoning
19 regulations, or lacks proper access to a street, it shall be
20 sold by the condemning authority by sealed bid to the abutting
21 owner submitting the highest offer above the appraised value;
22 provided further that if any such excess property abuts more



1 than one parcel, the condemning authority may make application
 2 for subdividing such property so that a portion thereof may be
 3 sold to each abutting owner at the appraised value if the public
 4 interest is best served by such subdivision and disposal. All
 5 moneys received from the sale or lease of such excess property
 6 shall be paid into the fund or appropriation from which money
 7 was taken for the original condemnation and shall be available
 8 for the purposes of such fund or appropriation.

9 (b) Anything to the contrary notwithstanding, for purposes
 10 of this chapter, "public use" does not include any use of
 11 property that is for urban or economic development that would
 12 result in the development of any nongovernmental retail, office,
 13 commercial, residential, or industrial development or use."

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

17 SECTION 5. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

Handwritten signatures and initials:
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Report Title:
Eminent Domain

Description:

Prohibits the exercise of the powers of eminent domain by the State and counties for urban renewal or economic development projects that result in the development of nongovernmental retail, office, commercial, residential, or industrial development.

