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# A BILL FOR AN ACT

RELATING TO EMINENT DOMAIN.

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

1 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended  
2 by adding a new section to be appropriately designated and to  
3 read as follows:

4 "§46- No eminent domain for private purpose or economic  
5 development. (a) Anything to the contrary notwithstanding, no  
6 county or any of its departments, agencies, commission,  
7 authorities, or any private entity may take any interest or  
8 damage any private property through the use of eminent domain if  
9 the taking:

10 (1) Confers a private benefit on a particular private  
11 party through the use of the property;

12 (2) Is for a public use that is merely a pretext to confer  
13 a private benefit on a particular private party; or

14 (3) Is for economic development purposes, unless the  
15 economic development is a secondary purpose resulting  
16 from urban renewal activities to eliminate existing  
17 blighted areas pursuant to chapter 53.



1        (b) The determination by the governmental or private  
2 entity proposing to take property that the taking does not  
3 involve an act or circumstance prohibited by subsection (a) does  
4 not create a presumption with respect to whether the taking  
5 involves that act or circumstance."

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

8        **"§101-2 Taking private property for public use; disposal**  
9 **of excess property[-]; private use prohibited.** (a) Private  
10 property may be taken for public use. Private property may also  
11 be taken by the State or any county in excess of that needed for  
12 such public use in cases where small remnants would otherwise be  
13 left or where other justifiable cause necessitates such taking  
14 to protect and preserve the contemplated improvement, or public  
15 policy demands such taking in connection with the improvement,  
16 in which case the condemning authority may sell or lease such  
17 excess property, with such restrictions as may be dictated by  
18 considerations of public policy in order to protect and preserve  
19 such improvements; provided that in the disposal of any such  
20 excess property, if such property is less than the minimum lot  
21 size requirements of the applicable zoning regulations, is of a  
22 configuration or topography which in the judgment of the



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



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

8 (b) Anything to the contrary notwithstanding, for purposes  
9 of this chapter, "public use" does not include any use of  
10 property that:

11 (1) Confers a private benefit on a particular private  
12 party through the use of the property;

13 (2) Is for a public use that is merely a pretext to confer  
14 a private benefit on a particular private party; or

15 (3) Is for economic development purposes, unless the  
16 economic development is a secondary purpose resulting  
17 from urban renewal activities to eliminate existing  
18 blighted areas pursuant to chapter 53.

19 (c) The determination by the State or any county proposing  
20 to take property that the taking does not involve an act or  
21 circumstance prohibited by subsection (b) does not create a



1 presumption with respect to whether the taking involves that act  
2 or circumstance."

3 SECTION 3. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:





JAN 25 2006



HB 2864

**Report Title:**

Eminent Domain

**Description:**

Prohibits exercise of eminent domain (1) to confer private benefit on a particular person; (2) for public use that is merely pretext to confer private benefit on a particular person; or (3) for economic development, unless economic development is secondary purpose resulting from urban renewal activities.

