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

15           (b) If any property taken through eminent domain after the  
16 effective date of this Act ceases to be used for the stated  
17 public use, the former owner of the property or a beneficiary or  
18 heir if one has been designated for this purpose, shall have the  
19 right to reacquire the property for the fair market value of the  
20 property before the property may be sold or transferred."

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



1           "§101-2 Taking private property for public use; disposal  
2 of excess property [-]; public use. (a) Private property may be  
3 taken for public use. Private property may also be taken by the  
4 State or any county in excess of that needed for such public use  
5 in cases where small remnants would otherwise be left or where  
6 other justifiable cause necessitates such taking to protect and  
7 preserve the contemplated improvement, or public policy demands  
8 such taking in connection with the improvement, in which case  
9 the condemning authority may sell or lease such excess property,  
10 with such restrictions as may be dictated by considerations of  
11 public policy [~~in order~~] to protect and preserve such  
12 improvements; provided that in the disposal of any such excess  
13 property, if such property is less than the minimum lot size  
14 requirements of the applicable zoning regulations, is of a  
15 configuration or topography which in the judgment of the  
16 appropriate county zoning authority cannot be put to a  
17 reasonable use in accordance with the applicable zoning  
18 regulations, or lacks proper access to a street, it shall be  
19 offered to the owner or owners of the abutting land for a  
20 reasonable price based on an appraisal; provided further that if  
21 such excess property conforms to said minimum lot size  
22 requirements, is of a configuration and topography which in the



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



1        (b) Notwithstanding any law to the contrary, for purposes  
2 of this chapter, "public use" shall not include any use of  
3 property that is for urban or economic development that would  
4 result in the development of any nongovernmental retail, office,  
5 commercial, residential, or industrial development or use;  
6 provided that "public use" shall include developments that are  
7 determined by the governing authority to be integral and  
8 required elements of public purpose projects, including but not  
9 limited to affordable housing, shelters for the homeless,  
10 schools, hospitals, disaster preparedness, or renewal projects,  
11 and mass transit systems.

12        (c) If any property taken through eminent domain after the  
13 effective date of this Act ceases to be used for the stated  
14 public use, the former owner of the property or a beneficiary or  
15 heir if one has been designated for this purpose, shall have the  
16 right to reacquire the property for the fair market value of the  
17 property before the property may be sold or transferred."

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

21        SECTION 5. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



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



SB 2986 S02  
HD1

**Report Title:**  
Eminent Domain

**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. Allows a former owner or beneficiary to reacquire property for fair market value if property taken through eminent domain ceases to be used for stated public use. (SB 2986 HD1)

