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# A BILL FOR AN ACT

RELATING TO CONDEMNATION.

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

1           SECTION 1. The fifth Amendment to the United States  
2 Constitution provides, in part, the following "[N]or shall  
3 private property be taken for public use, without just  
4 compensation." Similarly, section 20, article II of the Hawaii  
5 state constitution provides the following: "Private property  
6 shall not be taken or damaged for public use without just  
7 compensation."

8           In a recent United States Supreme Court decision, Kelo v.  
9 New London, (04-108) June 23, 2005, the court determined that  
10 the "public use" provision of the taking clause of the fifth  
11 amendment to the United States Constitution allowed the use of  
12 the powers of eminent domain for economic development purposes  
13 to be carried out by a private entity.

14           In that landmark case, the city of New London, Connecticut,  
15 following decades of economic decline targeted an area of ninety  
16 acres in the municipality for a planned economic redevelopment.  
17 Following public meetings, the state of Connecticut authorized a  
18 private nonprofit entity to proceed with the redevelopment that



1 would eventually include a waterfront conference hotel,  
2 restaurants, retail shops, offices, residential units, and a  
3 marina for recreational and commercial uses. The stated purpose  
4 of the project was to create new jobs, generate increased tax  
5 revenues, and revitalize that section of the municipality. To  
6 proceed with the project the private entity vicariously utilized  
7 the city's power of eminent domain to condemn certain parcels  
8 within the redevelopment area that were privately owned by  
9 persons not willing to voluntarily sell their property in lieu  
10 of condemnation, thereby resulting in the case. The trial court  
11 ruled partially in favor of the exercise of the power of eminent  
12 domain by the city. The decision was appealed to the supreme  
13 court of Connecticut which upheld the trial court, in part, and  
14 reversed, in part, resulting in a full condemnation of the  
15 subject development project. The United States Supreme Court  
16 affirmed the decision of the supreme court of Connecticut. This  
17 decision raised many dismayed voices, including many in this  
18 State, clamoring that private property should in no case be  
19 taken by the powers of eminent domain from one private entity to  
20 then be transferred to another private entity for whatever  
21 stated public purpose or good.



1           With some irony, in support of its decision, the Supreme  
2 Court cited Hawaii Housing Authority v. Midkiff, 467 U.S. 229  
3 (1984) several times, in which case the court considered a  
4 Hawaii statute through which fee title was taken from lessors  
5 and transferred to lessees. The court "concluded that the  
6 State's purpose of eliminating the 'social and economic evils of  
7 a land oligopoly' qualified as a valid public use. (cite  
8 omitted)" Kelo at p. 11. In further support of both Hawaii  
9 Housing Authority and Kelo, the court went on to state "For more  
10 than a century, our public prudence has wisely eschewed rigid  
11 formulas and intrusive scrutiny in favor of affording  
12 legislatures broad latitude in determining what public needs  
13 justify the use of the taking power." Kelo, at p. 13.

14           However, it is this latter point, the upholding of  
15 legislative policy that is of interest at the present time. In  
16 closing, the majority opinion stated "We emphasize that nothing  
17 in our opinion precludes any State from placing further  
18 restrictions on its exercise of the takings power. Indeed, many  
19 States already impose 'public use' requirements that are  
20 stricter than the federal baselines. Some of these requirements  
21 have been established as a matter of state constitutional law,  
22 while others are expressed in state eminent domain statutes that



1 carefully limit the grounds upon which takings may be  
2 exercised." Kelo, at p. 19.

3 The legislature finds that the taking of private property  
4 for purely public use, such as the development of roads,  
5 airports, water and wastewater works, schools and libraries, and  
6 other public building and improvements is necessary and  
7 appropriated. Your legislature further finds that the taking of  
8 private property and transferring it to another private party  
9 for use by the public, such as in the case of railroads and rail  
10 transit companies with common carrier duties or other public  
11 power and utility companies serving the public as public  
12 utilities is necessary and appropriate. However, your  
13 legislature finds that the exercise of the power of eminent  
14 domain to take private property and transfer the property to  
15 another private entity for a purported economic development  
16 purpose is not a taking for a public purpose.

17 The purpose of this Act is to prohibit the exercise of the  
18 power of eminent domain to take private property and transfer  
19 the property to another private entity for economic development  
20 purposes.



1 SECTION 2. 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 economic development  
5 purposes. No county or any of its departments, agencies,  
6 commissions, authorities, or any private entity may take any  
7 interest in or damage any private property through the use of  
8 eminent domain if the taking is for the purpose of urban or  
9 economic development that would result in the development of any  
10 nongovernmental retail, office, commercial, residential, or  
11 industrial development or use."

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

14 "§101-2 Taking private property for public use; disposal  
15 of excess property[-]; public use. (a) Private property may be  
16 taken for public use. Private property may also be taken by the  
17 State or any county in excess of that needed for such public use  
18 in cases where small remnants would otherwise be left or where  
19 other justifiable cause necessitates such taking to protect and  
20 preserve the contemplated improvement, or public policy demands  
21 such taking in connection with the improvement, in which case  
22 the condemning authority may sell or lease such excess property,

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



1 put to a reasonable use in accordance with applicable zoning  
2 regulations, or lacks proper access to a street, it shall be  
3 sold by the condemning authority by sealed bid to the abutting  
4 owner submitting the highest offer above the appraised value;  
5 provided further that if any such excess property abuts more  
6 than one parcel, the condemning authority may make application  
7 for subdividing such property so that a portion thereof may be  
8 sold to each abutting owner at the appraised value if the public  
9 interest is best served by such subdivision and disposal. All  
10 moneys received from the sale or lease of such excess property  
11 shall be paid into the fund or appropriation from which money  
12 was taken for the original condemnation and shall be available  
13 for the purposes of such fund or appropriation.

14 (b) For purposes of this chapter, "public use" does not  
15 include any use of property that is for urban or economic  
16 development that would result in the development of any  
17 nongovernmental retail, office, commercial, residential, or  
18 industrial development or use."

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



1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Kirk Caldwell

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**Report Title:**

Eminent Domain; Economic Development

**Description:**

Prohibits the exercise of the powers of eminent domain by the State and counties for economic development resulting in the development of nongovernmental improvements.

