

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO EMINENT DOMAIN POWERS.

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

1           SECTION 1. Section 101-2, Hawaii Revised Statutes, is  
2 amended to read as follows:  
3           "**§101-2 Taking private property for public use; disposal**  
4 **of excess property.** Private property may be taken for public  
5 use[-]; provided that public use for purposes of eminent domain  
6 powers shall not be construed to include the condemning of  
7 private property and the subsequent transfer of that same  
8 property to a private entity that expressed an interest in  
9 purchasing that same property for development or commercial  
10 purposes or private use before the condemnation. Private  
11 property may also be taken by the State or any county in excess  
12 of that needed for such public use in cases where small remnants  
13 would otherwise be left or where other justifiable cause  
14 necessitates such taking to protect and preserve the  
15 contemplated improvement, or public policy demands such taking  
16 in connection with the improvement, in which case the condemning  
17 authority may sell or lease such excess property, with such  
18 restrictions as may be dictated by considerations of public



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



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

13 SECTION 2. Section 46-1.5, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 **"§46-1.5 General powers and limitation of the counties.**

16 Subject to general law, each county shall have the following  
17 powers and shall be subject to the following liabilities and  
18 limitations:

- 19 (1) Each county shall have the power to frame and adopt a  
20 charter for its own self-government, which shall  
21 establish the county executive, administrative, and  
22 legislative structure and organization, including, but



1 not limited to, the method of appointment or election  
2 of officials, their duties, responsibilities, and  
3 compensation, and the terms of their office;

4 (2) Each county shall have the power to provide for and  
5 regulate the marking and lighting of all buildings and  
6 other structures that may be obstructions or hazards  
7 to aerial navigation, so far as may be necessary or  
8 proper for the protection and safeguarding of life,  
9 health, and property;

10 (3) Each county shall have the power to enforce all claims  
11 on behalf of the county and approve all lawful claims  
12 against the county, but shall be prohibited from  
13 entering into, granting, or making in any manner any  
14 contract, authorization, allowance payment, or  
15 liability contrary to the provisions of any county  
16 charter or general law;

17 (4) Each county shall have the power to make contracts and  
18 to do all things necessary and proper to carry into  
19 execution all powers vested in the county or any  
20 county officer;

21 (5) Each county shall have the power to maintain channels,  
22 whether natural or artificial, including their exits



1 to the ocean, in suitable condition to carry off storm  
2 waters; and to remove from the channels, and from the  
3 shores and beaches, any debris that is likely to  
4 create an unsanitary condition or become a public  
5 nuisance; provided that, to the extent any of the  
6 foregoing work is a private responsibility, the  
7 responsibility may be enforced by the county in lieu  
8 of the work being done at public expense. Counties  
9 also shall have the power to construct, acquire by  
10 gift, purchase, or by the exercise of eminent domain,  
11 reconstruct, improve, better, extend, and maintain  
12 projects or undertakings for the control of and  
13 protection against floods and flood waters, including  
14 the power to drain and rehabilitate lands already  
15 flooded, and to enact zoning ordinances providing that  
16 lands deemed subject to seasonable, periodic, or  
17 occasional flooding shall not be used for residence or  
18 other purposes in a manner as to endanger the health  
19 or safety of the occupants thereof, as required by the  
20 Federal Flood Insurance Act of 1956 (chapter 1025,  
21 Public Law 1016);



- 1           (6) Each county shall have the power to exercise the power  
2           of condemnation by eminent domain, in accordance with  
3           section 46-61, when it is in the public interest to do  
4           so; provided that no county shall condemn private  
5           property and subsequently transfer that same property  
6           to a private entity that expressed an interest in  
7           purchasing that same property for development or  
8           commercial purposes or private use before the  
9           condemnation.
- 10          (7) Each county shall have the power to exercise  
11          regulatory powers over business activity as are  
12          assigned to them by chapter 445 or other general law;
- 13          (8) Each county shall have the power to fix the fees and  
14          charges for all official services not otherwise  
15          provided for;
- 16          (9) Each county shall have the power to provide by  
17          ordinance assessments for the improvement or  
18          maintenance of districts within the county;
- 19          (10) Except as otherwise provided, no county shall have the  
20          power to give or loan credit to, or in aid of, any  
21          person or corporation, directly or indirectly, except  
22          for a public purpose;



1           (11) Where not within the jurisdiction of the public  
2           utilities commission, each county shall have the power  
3           to regulate by ordinance the operation of motor  
4           vehicle common carriers transporting passengers within  
5           the county and adopt and amend rules the county deems  
6           necessary for the public convenience and necessity;

7           (12) Each county shall have the power to enact and enforce  
8           ordinances necessary to prevent or summarily remove  
9           public nuisances and to compel the clearing or removal  
10          of any public nuisance, refuse, and uncultivated  
11          undergrowth from streets, sidewalks, public places,  
12          and unoccupied lots, and in these connections, to  
13          impose and enforce liens upon the property for the  
14          cost to the county of removing and completing the  
15          necessary work where the owners fail, after reasonable  
16          notice, to comply with the ordinances. The authority  
17          provided by this paragraph shall not be self-  
18          executing, but shall become fully effective within a  
19          county only upon the enactment or adoption by the  
20          county of appropriate and particular laws, ordinances,  
21          or rules defining "public nuisances" with respect to  
22          each county's respective circumstances. The counties



1 shall provide the property owner with the opportunity  
2 to contest the summary action and to recover the  
3 owner's property;

4 (13) Each county shall have the power to enact ordinances  
5 deemed necessary to protect health, life, and  
6 property, and to preserve the order and security of  
7 the county and its inhabitants on any subject or  
8 matter not inconsistent with, or tending to defeat,  
9 the intent of any state statute, provided also that  
10 the statute does not disclose an express or implied  
11 intent that the statute shall be exclusive or uniform  
12 throughout the State;

13 (14) Each county shall have the power to make and enforce  
14 within the limits of the county all necessary  
15 ordinances covering: all local police matters; all  
16 matters of sanitation; all matters of inspection of  
17 buildings; all matters of condemnation of unsafe  
18 structures, plumbing, sewers, dairies, milk, fish, and  
19 morgues; all matters of the collection and disposition  
20 of rubbish and garbage; and to provide exemptions for  
21 homeless facilities and any other program for the  
22 homeless authorized by chapter 201G, for all matters





1 under this paragraph; and to appoint county physicians  
2 and sanitary and other inspectors as necessary to  
3 carry into effect ordinances made under this  
4 paragraph, who shall have the same power as given by  
5 law to agents of the department of health, subject  
6 only to limitations placed on them by the terms and  
7 conditions of their appointments; and to fix a penalty  
8 for the violation of any ordinance, which penalty may  
9 be a misdemeanor, petty misdemeanor, or violation as  
10 defined by general law;

11 (15) Each county shall have the power to provide public  
12 pounds, to regulate the impounding of stray animals  
13 and fowl, and their disposition, and to provide for  
14 the appointment, powers, duties, and fees of animal  
15 control officers;

16 (16) Each county shall have the power to purchase and  
17 otherwise acquire, lease, and hold real and personal  
18 property within the defined boundaries of the county  
19 and to dispose of the real and personal property as  
20 the interests of the inhabitants of the county may  
21 require, except that: any property held for school  
22 purposes may not be disposed of without the consent of



1 the superintendent of education; no property bordering  
2 the ocean shall be sold or otherwise disposed of; and  
3 all proceeds from the sale of park lands shall be  
4 expended only for the acquisition of property for park  
5 or recreational purposes;

6 (17) Each county shall have the power to provide by charter  
7 for the prosecution of all offenses and to prosecute  
8 for offenses against the laws of the State under the  
9 authority of the attorney general of the State;

10 (18) Each county shall have the power to make  
11 appropriations in amounts deemed appropriate from any  
12 moneys in the treasury, for the purpose of community  
13 promotion and public celebrations, the entertainment  
14 of distinguished persons as may from time to time  
15 visit the county, for the entertainment of other  
16 distinguished persons as well as public officials when  
17 deemed to be in the best interest of the community,  
18 and the rendering of civic tribute to individuals who,  
19 by virtue of their accomplishments and community  
20 service, merit civic commendations, recognition, or  
21 remembrance;

22 (19) Each county shall have the power to:



- 1 (A) Construct, purchase, take on lease, lease,  
2 sublease, or in any other manner acquire, manage,  
3 maintain, or dispose of buildings for county  
4 purposes, sewers, sewer systems, pumping  
5 stations, waterworks, including reservoirs,  
6 wells, pipelines, and other conduits for  
7 distributing water to the public, lighting  
8 plants, and apparatus and appliances for lighting  
9 streets and public buildings and manage,  
10 regulate, and control the same;
- 11 (B) Regulate and control the location and quality of  
12 all appliances necessary to the furnishing of  
13 water, heat, light, power, telephonic, and  
14 telegraphic service to the county;
- 15 (C) Acquire, regulate, and control any and all  
16 appliances for the sprinkling and cleaning of the  
17 streets and the public ways and for flushing the  
18 sewers; and
- 19 (D) Open, close, construct, or maintain county  
20 highways or charge toll on county highways;  
21 provided that all revenues received from a toll



1 charge shall be used for the construction or  
2 maintenance of county highways;

3 (20) Each county shall have the power to regulate the  
4 renting, subletting, and rental conditions of property  
5 for places of abode by ordinance;

6 (21) Unless otherwise provided by law, each county shall  
7 have the power to establish by ordinance the order of  
8 succession of county officials in the event of a  
9 military or civil disaster;

10 (22) Each county shall have the power to sue and be sued in  
11 its corporate name;

12 (23) Each county shall have the power to establish and  
13 maintain waterworks and sewer works; to collect rates  
14 for water supplied to consumers and for the use of  
15 sewers; to install water meters whenever deemed  
16 expedient; provided that owners of premises having  
17 vested water rights under existing laws appurtenant to  
18 the premises shall not be charged for the installation  
19 or use of the water meters on the premises; to take  
20 over from the State existing waterworks systems,  
21 including water rights, pipelines, and other



1 appurtenances belonging thereto, and sewer systems,  
2 and to enlarge, develop, and improve the same;

3 (24) (A) Each county may impose civil fines, in addition  
4 to criminal penalties, for any violation of  
5 county ordinances or rules after reasonable  
6 notice and requests to correct or cease the  
7 violation have been made upon the violator. Any  
8 administratively imposed civil fine shall not be  
9 collected until after an opportunity for a  
10 hearing under chapter 91. Any appeal shall be  
11 filed within thirty days from the date of the  
12 final written decision. These proceedings shall  
13 not be a prerequisite for any civil fine or  
14 injunctive relief ordered by the circuit court;

15 (B) Each county by ordinance may provide for the  
16 addition of any unpaid civil fines, ordered by  
17 any court of competent jurisdiction, to any  
18 taxes, fees, or charges, with the exception of  
19 fees or charges for water for residential use and  
20 sewer charges collected by the county. Each  
21 county by ordinance may also provide for the  
22 addition of any unpaid administratively imposed



1 civil fines, which remain due after all judicial  
2 review rights under section 91-14 are exhausted,  
3 to any taxes, fees, or charges, with the  
4 exception of water for residential use and sewer  
5 charges, collected by the county. The ordinance  
6 shall specify the administrative procedures for  
7 the addition of the unpaid civil fines to the  
8 eligible taxes, fees, or charges and may require  
9 hearings or other proceedings. After addition of  
10 the unpaid civil fines to the taxes, fees, or  
11 charges, the unpaid civil fines shall not become  
12 a part of any taxes, fees, or charges. The  
13 county by ordinance may condition the issuance or  
14 renewal of a license, approval, or permit for  
15 which a fee or charge is assessed, except for  
16 water for residential use and sewer charges, on  
17 payment of the unpaid civil fines. Upon  
18 recordation of a notice of unpaid civil fines in  
19 the bureau of conveyances, the amount of the  
20 civil fines, including any increase in the amount  
21 of the fine which the county may assess, shall  
22 constitute a lien upon all real property or



1           rights to real property belonging to any person  
2           liable for the unpaid civil fines. The lien in  
3           favor of the county shall be subordinate to any  
4           lien in favor of any person recorded or  
5           registered prior to the recordation of the notice  
6           of unpaid civil fines and senior to any lien  
7           recorded or registered after the recordation of  
8           the notice. The lien shall continue until the  
9           unpaid civil fines are paid in full or until a  
10          certificate of release or partial release of the  
11          lien, prepared by the county at the owner's  
12          expense, is recorded. The notice of unpaid civil  
13          fines shall state the amount of the fine as of  
14          the date of the notice and maximum permissible  
15          daily increase of the fine. The county shall not  
16          be required to include a social security number,  
17          state general excise taxpayer identification  
18          number, or federal employer identification number  
19          on the notice. Recordation of the notice in the  
20          bureau of conveyances shall be deemed, at such  
21          time, for all purposes and without any further  
22          action, to procure a lien on land registered in



1 land court under chapter 501. After the unpaid  
2 civil fines are added to the taxes, fees, or  
3 charges as specified by county ordinance, the  
4 unpaid civil fines shall be deemed immediately  
5 due, owing and delinquent and may be collected in  
6 any lawful manner. The procedure for collection  
7 of unpaid civil fines authorized in this  
8 paragraph shall be in addition to any other  
9 procedures for collection available to the State  
10 and county by law or rules of the courts;

11 (C) Each county may impose civil fines upon any  
12 person who places graffiti on any real or  
13 personal property owned, managed, or maintained  
14 by the county. The fine may be up to \$1,000 or  
15 may be equal to the actual cost of having the  
16 damaged property repaired or replaced. The  
17 parent or guardian having custody of a minor who  
18 places graffiti on any real or personal property  
19 owned, managed, or maintained by the county shall  
20 be jointly and severally liable with the minor  
21 for any civil fines imposed hereunder. Any such  
22 fine may be administratively imposed after an





1 opportunity for a hearing under chapter 91, but  
2 such a proceeding shall not be a prerequisite for  
3 any civil fine ordered by any court. As used in  
4 this subparagraph, "graffiti" means any  
5 unauthorized drawing, inscription, figure, or  
6 mark of any type intentionally created by paint,  
7 ink, chalk, dye, or similar substances;

8 (D) At the completion of an appeal in which the  
9 county's enforcement action is affirmed and upon  
10 correction of the violation if requested by the  
11 violator, the case will be reviewed by the county  
12 agency that imposed the civil fines to determine  
13 the appropriateness of the amount of the civil  
14 fines that accrued while the appeal proceedings  
15 were pending. In its review of the amount of the  
16 accrued fines, the county agency may consider the  
17 following: nature and egregiousness of the  
18 violation, duration of the violation, number of  
19 recurring and other similar violations, effort  
20 taken by the violator to correct the violation,  
21 degree of involvement in causing or continuing  
22 the violation, reasons for any delay in the



1 completion of the appeal, and other extenuating  
2 circumstances. The civil fine which is imposed  
3 by administrative order after this review is  
4 completed and the violation is corrected is  
5 subject to only judicial review, notwithstanding  
6 any provisions for administrative review in  
7 county charters;

8 (E) After completion of a review of the amount of  
9 accrued civil fine by the county agency which  
10 imposed the fine, the amount of the civil fine  
11 determined appropriate, including both the  
12 initial civil fine and any accrued daily civil  
13 fine, shall immediately become due and  
14 collectible following reasonable notice to the  
15 violator. If no review of the accrued civil fine  
16 is requested, the amount of the civil fine, not  
17 to exceed the total accrual of civil fine prior  
18 to correcting the violation, shall immediately  
19 become due and collectible following reasonable  
20 notice to the violator, at the completion of all  
21 appeal proceedings;



1 (F) If no county agency exists to conduct appeal  
 2 proceedings for a particular civil fine action  
 3 taken by the county, then one shall be  
 4 established by ordinance before the county shall  
 5 impose that civil fine;

6 (25) Any law to the contrary notwithstanding, any county  
 7 mayor may exempt by executive order donors, provider  
 8 agencies, homeless facilities, and any other program  
 9 for the homeless under chapter 201G from real property  
 10 taxes, water and sewer development fees, rates  
 11 collected for water supplied to consumers and for use  
 12 of sewers, and any other county taxes, charges, or  
 13 fees; provided that any county may enact ordinances to  
 14 regulate and grant the exemptions granted by this  
 15 paragraph;

16 (26) Any county may establish a captive insurance company  
 17 pursuant to article 19, chapter 431; and

18 (27) Each county shall have the power to enact and enforce  
 19 ordinances regulating towing operations."

20 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY:

4. Kalani Gosh

Ann M. Tom  
Jeanne Chun Oakland  
Francis Q. Thomas  
 Carol Fukunaga  
 Heide  
 John L  
Will Egan



**Report Title:**

Eminent Domain Powers; Restrictions

**Description:**

Prohibits the State and counties from condemning private property for a private economic interest or a private entity who expressed an interest in developing that same property for development purposes or private use before the condemnation.

