

JAN 25 2006

S.B. NO. 3191

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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. In many  
8 cases the receiving private entity had expressed an earlier  
9 interest in the condemned property for development or other  
10 private use.

11           The purpose of this Act is to prohibit the exercise of the  
12 power of eminent domain to take private property and transfer  
13 the property to another private entity for development purposes  
14 where the receiving private entity had earlier expressed an  
15 interest in developing the condemned property.

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



1           "§101-2 Taking private property for public use; disposal  
2 of excess property. Private property may be taken for public  
3 use[-]; provided that public use for purposes of eminent domain  
4 powers shall not be construed to include the condemning of  
5 private property and the subsequent transfer of that same  
6 property to a private entity that had expressed an interest in  
7 purchasing that same property for development or commercial  
8 purposes or private use before the condemnation. Private  
9 property may also be taken by the State or any county in excess  
10 of that needed for such public use in cases where small remnants  
11 would otherwise be left or where other justifiable cause  
12 necessitates such taking to protect and preserve the  
13 contemplated improvement, or public policy demands such taking  
14 in connection with the improvement, in which case the condemning  
15 authority may sell or lease such excess property, with such  
16 restrictions as may be dictated by considerations of public  
17 policy in order to protect and preserve such improvements;  
18 provided that in the disposal of any such excess property, if  
19 such property is less than the minimum lot size requirements of  
20 the applicable zoning regulations, is of a configuration or  
21 topography which in the judgment of the appropriate county  
22 zoning authority cannot be put to a reasonable use in accordance



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



1 appraised value if the public interest is best served by such  
2 subdivision and disposal. All moneys received from the sale or  
3 lease of such excess property shall be paid into the fund or  
4 appropriation from which money was taken for the original  
5 condemnation and shall be available for the purposes of such  
6 fund or appropriation."

7 SECTION 3. Section 46-1.5, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 **"§46-1.5 General powers and limitation of the counties.**

10 Subject to general law, each county shall have the following  
11 powers and shall be subject to the following liabilities and  
12 limitations:

13 (1) Each county shall have the power to frame and adopt a  
14 charter for its own self-government, which shall  
15 establish the county executive, administrative, and  
16 legislative structure and organization, including, but  
17 not limited to, the method of appointment or election  
18 of officials, their duties, responsibilities, and  
19 compensation, and the terms of their office;

20 (2) Each county shall have the power to provide for and  
21 regulate the marking and lighting of all buildings and  
22 other structures that may be obstructions or hazards



1 to aerial navigation, so far as may be necessary or  
2 proper for the protection and safeguarding of life,  
3 health, and property;

4 (3) Each county shall have the power to enforce all claims  
5 on behalf of the county and approve all lawful claims  
6 against the county, but shall be prohibited from  
7 entering into, granting, or making in any manner any  
8 contract, authorization, allowance payment, or  
9 liability contrary to the provisions of any county  
10 charter or general law;

11 (4) Each county shall have the power to make contracts and  
12 to do all things necessary and proper to carry into  
13 execution all powers vested in the county or any  
14 county officer;

15 (5) Each county shall have the power to maintain channels,  
16 whether natural or artificial, including their exits  
17 to the ocean, in suitable condition to carry off storm  
18 waters; and to remove from the channels, and from the  
19 shores and beaches, any debris that is likely to  
20 create an unsanitary condition or become a public  
21 nuisance; provided that, to the extent any of the  
22 foregoing work is a private responsibility, the



1 responsibility may be enforced by the county in lieu  
2 of the work being done at public expense. Counties  
3 also shall have the power to construct, acquire by  
4 gift, purchase, or by the exercise of eminent domain,  
5 reconstruct, improve, better, extend, and maintain  
6 projects or undertakings for the control of and  
7 protection against floods and flood waters, including  
8 the power to drain and rehabilitate lands already  
9 flooded, and to enact zoning ordinances providing that  
10 lands deemed subject to seasonable, periodic, or  
11 occasional flooding shall not be used for residence or  
12 other purposes in a manner as to endanger the health  
13 or safety of the occupants thereof, as required by the  
14 Federal Flood Insurance Act of 1956 (chapter 1025,  
15 Public Law 1016);

- 16 (6) Each county shall have the power to exercise the power  
17 of condemnation by eminent domain, in accordance with  
18 section 46-61, when it is in the public interest to do  
19 so; provided that no county shall condemn private  
20 property and subsequently transfer that same property  
21 to a private entity that had expressed an interest in  
22 purchasing that same property for development or



1           commercial purposes or private use before the  
2           condemnation;

3           (7) Each county shall have the power to exercise  
4           regulatory powers over business activity as are  
5           assigned to them by chapter 445 or other general law;

6           (8) Each county shall have the power to fix the fees and  
7           charges for all official services not otherwise  
8           provided for;

9           (9) Each county shall have the power to provide by  
10          ordinance assessments for the improvement or  
11          maintenance of districts within the county;

12          (10) Except as otherwise provided, no county shall have the  
13          power to give or loan credit to, or in aid of, any  
14          person or corporation, directly or indirectly, except  
15          for a public purpose;

16          (11) Where not within the jurisdiction of the public  
17          utilities commission, each county shall have the power  
18          to regulate by ordinance the operation of motor  
19          vehicle common carriers transporting passengers within  
20          the county and adopt and amend rules the county deems  
21          necessary for the public convenience and necessity;



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





1 the county and its inhabitants on any subject or  
2 matter not inconsistent with, or tending to defeat,  
3 the intent of any state statute, provided also that  
4 the statute does not disclose an express or implied  
5 intent that the statute shall be exclusive or uniform  
6 throughout the State;

7 (14) Each county shall have the power to make and enforce  
8 within the limits of the county all necessary  
9 ordinances covering: all local police matters; all  
10 matters of sanitation; all matters of inspection of  
11 buildings; all matters of condemnation of unsafe  
12 structures, plumbing, sewers, dairies, milk, fish, and  
13 morgues; all matters of the collection and disposition  
14 of rubbish and garbage; and to provide exemptions for  
15 homeless facilities and any other program for the  
16 homeless authorized by chapter 201G, for all matters  
17 under this paragraph; and to appoint county physicians  
18 and sanitary and other inspectors as necessary to  
19 carry into effect ordinances made under this  
20 paragraph, who shall have the same power as given by  
21 law to agents of the department of health, subject  
22 only to limitations placed on them by the terms and



1 conditions of their appointments; and to fix a penalty  
2 for the violation of any ordinance, which penalty may  
3 be a misdemeanor, petty misdemeanor, or violation as  
4 defined by general law;

5 (15) Each county shall have the power to provide public  
6 pounds, to regulate the impounding of stray animals  
7 and fowl, and their disposition, and to provide for  
8 the appointment, powers, duties, and fees of animal  
9 control officers;

10 (16) Each county shall have the power to purchase and  
11 otherwise acquire, lease, and hold real and personal  
12 property within the defined boundaries of the county  
13 and to dispose of the real and personal property as  
14 the interests of the inhabitants of the county may  
15 require, except that: any property held for school  
16 purposes may not be disposed of without the consent of  
17 the superintendent of education; no property bordering  
18 the ocean shall be sold or otherwise disposed of; and  
19 all proceeds from the sale of park lands shall be  
20 expended only for the acquisition of property for park  
21 or recreational purposes;



1       (17) Each county shall have the power to provide by charter  
2           for the prosecution of all offenses and to prosecute  
3           for offenses against the laws of the State under the  
4           authority of the attorney general of the State;

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

17       (19) Each county shall have the power to:  
18           (A) Construct, purchase, take on lease, lease,  
19                sublease, or in any other manner acquire, manage,  
20                maintain, or dispose of buildings for county  
21                purposes, sewers, sewer systems, pumping  
22                stations, waterworks, including reservoirs,

1 wells, pipelines, and other conduits for  
2 distributing water to the public, lighting  
3 plants, and apparatus and appliances for lighting  
4 streets and public buildings and manage,  
5 regulate, and control the same;

6 (B) Regulate and control the location and quality of  
7 all appliances necessary to the furnishing of  
8 water, heat, light, power, telephonic, and  
9 telegraphic service to the county;

10 (C) Acquire, regulate, and control any and all  
11 appliances for the sprinkling and cleaning of the  
12 streets and the public ways and for flushing the  
13 sewers; and

14 (D) Open, close, construct, or maintain county  
15 highways or charge toll on county highways;  
16 provided that all revenues received from a toll  
17 charge shall be used for the construction or  
18 maintenance of county highways;

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



1 (21) Unless otherwise provided by law, each county shall  
2 have the power to establish by ordinance the order of  
3 succession of county officials in the event of a  
4 military or civil disaster;

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

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

19 (24) (A) Each county may impose civil fines, in addition  
20 to criminal penalties, for any violation of  
21 county ordinances or rules after reasonable  
22 notice and requests to correct or cease the



1 violation have been made upon the violator. Any  
2 administratively imposed civil fine shall not be  
3 collected until after an opportunity for a  
4 hearing under chapter 91. Any appeal shall be  
5 filed within thirty days from the date of the  
6 final written decision. These proceedings shall  
7 not be a prerequisite for any civil fine or  
8 injunctive relief ordered by the circuit court;

9 (B) Each county by ordinance may provide for the  
10 addition of any unpaid civil fines, ordered by  
11 any court of competent jurisdiction, to any  
12 taxes, fees, or charges, with the exception of  
13 fees or charges for water for residential use and  
14 sewer charges collected by the county. Each  
15 county by ordinance may also provide for the  
16 addition of any unpaid administratively imposed  
17 civil fines, which remain due after all judicial  
18 review rights under section 91-14 are exhausted,  
19 to any taxes, fees, or charges, with the  
20 exception of water for residential use and sewer  
21 charges, collected by the county. The ordinance  
22 shall specify the administrative procedures for



1 the addition of the unpaid civil fines to the  
2 eligible taxes, fees, or charges and may require  
3 hearings or other proceedings. After addition of  
4 the unpaid civil fines to the taxes, fees, or  
5 charges, the unpaid civil fines shall not become  
6 a part of any taxes, fees, or charges. The  
7 county by ordinance may condition the issuance or  
8 renewal of a license, approval, or permit for  
9 which a fee or charge is assessed, except for  
10 water for residential use and sewer charges, on  
11 payment of the unpaid civil fines. Upon  
12 recordation of a notice of unpaid civil fines in  
13 the bureau of conveyances, the amount of the  
14 civil fines, including any increase in the amount  
15 of the fine which the county may assess, shall  
16 constitute a lien upon all real property or  
17 rights to real property belonging to any person  
18 liable for the unpaid civil fines. The lien in  
19 favor of the county shall be subordinate to any  
20 lien in favor of any person recorded or  
21 registered prior to the recordation of the notice  
22 of unpaid civil fines and senior to any lien



1 recorded or registered after the recordation of  
2 the notice. The lien shall continue until the  
3 unpaid civil fines are paid in full or until a  
4 certificate of release or partial release of the  
5 lien, prepared by the county at the owner's  
6 expense, is recorded. The notice of unpaid civil  
7 fines shall state the amount of the fine as of  
8 the date of the notice and maximum permissible  
9 daily increase of the fine. The county shall not  
10 be required to include a social security number,  
11 state general excise taxpayer identification  
12 number, or federal employer identification number  
13 on the notice. Recordation of the notice in the  
14 bureau of conveyances shall be deemed, at such  
15 time, for all purposes and without any further  
16 action, to procure a lien on land registered in  
17 land court under chapter 501. After the unpaid  
18 civil fines are added to the taxes, fees, or  
19 charges as specified by county ordinance, the  
20 unpaid civil fines shall be deemed immediately  
21 due, owing and delinquent and may be collected in  
22 any lawful manner. The procedure for collection





1 of unpaid civil fines authorized in this  
2 paragraph shall be in addition to any other  
3 procedures for collection available to the State  
4 and county by law or rules of the courts;

5 (C) Each county may impose civil fines upon any  
6 person who places graffiti on any real or  
7 personal property owned, managed, or maintained  
8 by the county. The fine may be up to \$1,000 or  
9 may be equal to the actual cost of having the  
10 damaged property repaired or replaced. The  
11 parent or guardian having custody of a minor who  
12 places graffiti on any real or personal property  
13 owned, managed, or maintained by the county shall  
14 be jointly and severally liable with the minor  
15 for any civil fines imposed hereunder. Any such  
16 fine may be administratively imposed after an  
17 opportunity for a hearing under chapter 91, but  
18 such a proceeding shall not be a prerequisite for  
19 any civil fine ordered by any court. As used in  
20 this subparagraph, "graffiti" means any  
21 unauthorized drawing, inscription, figure, or



1 mark of any type intentionally created by paint,  
2 ink, chalk, dye, or similar substances;  
3 (D) At the completion of an appeal in which the  
4 county's enforcement action is affirmed and upon  
5 correction of the violation if requested by the  
6 violator, the case will be reviewed by the county  
7 agency that imposed the civil fines to determine  
8 the appropriateness of the amount of the civil  
9 fines that accrued while the appeal proceedings  
10 were pending. In its review of the amount of the  
11 accrued fines, the county agency may consider the  
12 following: nature and egregiousness of the  
13 violation, duration of the violation, number of  
14 recurring and other similar violations, effort  
15 taken by the violator to correct the violation,  
16 degree of involvement in causing or continuing  
17 the violation, reasons for any delay in the  
18 completion of the appeal, and other extenuating  
19 circumstances. The civil fine which is imposed  
20 by administrative order after this review is  
21 completed and the violation is corrected is  
22 subject to only judicial review, notwithstanding



1                   any provisions for administrative review in  
2                   county charters;  
3           (E) After completion of a review of the amount of  
4           accrued civil fine by the county agency which  
5           imposed the fine, the amount of the civil fine  
6           determined appropriate, including both the  
7           initial civil fine and any accrued daily civil  
8           fine, shall immediately become due and  
9           collectible following reasonable notice to the  
10          violator. If no review of the accrued civil fine  
11          is requested, the amount of the civil fine, not  
12          to exceed the total accrual of civil fine prior  
13          to correcting the violation, shall immediately  
14          become due and collectible following reasonable  
15          notice to the violator, at the completion of all  
16          appeal proceedings;  
17          (F) If no county agency exists to conduct appeal  
18          proceedings for a particular civil fine action  
19          taken by the county, then one shall be  
20          established by ordinance before the county shall  
21          impose that civil fine;



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

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

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

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

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

18

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**SB. NO. 3191**

**Report Title:**  
Eminent Domain

**Description:**

Prohibits use of power of eminent domain to take private property and transfer it to a private entity that had expressed interest in purchasing the same property for development purposes or other private use.

