
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*, 125 S.Ct. 2655 (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 to condemn private property and transfer the
6 property to the benefit of another private person or entity. In
7 many cases the receiving private entity had expressed an earlier
8 interest in the condemned property for development or other
9 private use.

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

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

17 "**§101-2 Taking private property for public use; disposal**
18 **of excess property.** Private property may be taken for public



1 use[-]; provided that public use shall not include the
2 condemning or transferring of private property to a private
3 entity that expresses an interest in purchasing the property for
4 development or commercial purposes or private use, except in
5 takings for public utilities, irrigation systems, affordable
6 housing and community developments, and the condemnation of
7 development tracts.

8 Private property may also be taken by the State or any
9 county in excess of that needed for such public use in cases
10 where small remnants would otherwise be left or where other
11 justifiable cause necessitates [~~such~~] the taking to protect and
12 preserve the contemplated improvement, or public policy demands
13 [~~such~~] the taking in connection with the improvement, in which
14 case the condemning authority may sell or lease [~~such~~] the
15 excess property, with [~~such~~] the restrictions as may be dictated
16 by considerations of public policy [~~in order~~] to protect and
17 preserve [~~such~~] the improvements; provided that in the disposal
18 of any [~~such~~] the excess property, if [~~such~~] the property is
19 less than the minimum lot size requirements of the applicable
20 zoning regulations, is of a configuration or topography which in
21 the judgment of the appropriate county zoning authority cannot
22 be put to a reasonable use in accordance with the applicable



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



1 except in takings for public utilities, irrigation
2 systems, and affordable housing and community
3 developments;

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

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

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

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

17 (11) Where not within the jurisdiction of the public
18 utilities commission, each county shall have the power
19 to regulate by ordinance the operation of motor
20 vehicle common carriers transporting passengers within
21 the county and adopt and amend rules the county deems
22 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.



Report Title:
Eminent Domain

Description:

Prohibits use of power of eminent domain to take and transfer private property to a private entity that had an expressed interest in purchasing the same property for development purposes or other private use. (SD1)

