

Honolulu, Hawaii

March 21, 2006

RE: S.B. No. 2986
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Water, Land, & Ocean Resources, to which was referred S.B. No. 2986, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO EMINENT DOMAIN,"

begs leave to report as follows:

The purpose of this bill is to address the concern raised by *Kelo v. New London*, 125 S. Ct. 2655 (2005), that urban renewal or economic development may justify the government to condemn private property for the benefit of a private entity despite the fact that the property may not be for a public use by:

- (1) Requiring the condemnor to own and occupy the private property taken by eminent domain;
- (2) Allowing the taking of private property by eminent domain only upon an independent judicial determination on the evidence that the condemnor has proven no reasonable alternative exists;
- (3) Allowing a former owner or beneficiary of the private property to reacquire the property for the fair market value of the property if the condemned property ceases to be used for the stated public use; and



- (4) Defining "stated public use" to include developments that are determined by the governing authority to be integral and required elements of public purpose projects, such as affordable housing, shelters for the homeless, schools, hospitals, disaster preparedness, or renewal projects, and mass transit systems.

The Hawaii Farm Bureau, Maui County Farm Bureau, Big Island Farm Bureau, Hawaii Agriculture Research Center, Hawaii Crop Improvement Association, C&H Farms, Small Landowners Association of Hawaii, Small Landowners of Oahu, and Hawaii Tropical Fruit Growers Association testified in support of this bill. The National Federation of Independent Businesses in Hawaii supported the intent of this measure. The Department of Transportation, City and County of Honolulu Department of Planning and Permitting, City and County of Honolulu Department of the Corporation Counsel, and several concerned individuals opposed this measure.

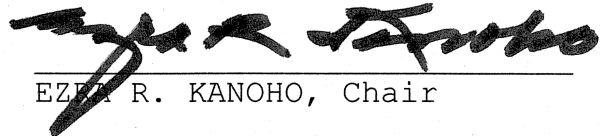
Your Committee has amended this bill by deleting a substantial portion and incorporating the language of H.B. No. 2135, H.D. 1. Specifically, the bill as amended:

- (1) Provides a purpose section regarding the concerns of the *Kelo* case;
- (2) Prohibits the taking of private property by eminent domain if the taking is for the purpose of urban or economic development that would result in the development of nongovernmental retail, office, commercial, residential, or industrial development or use and specifically excludes developments that are integral and required elements of public purpose projects, such as affordable housing and mass transit systems; and
- (3) Gives the former owner of the condemned land, if it ceases to be used for the stated public use, the right to reacquire the property for the fair market value before it may be sold or transferred.



As affirmed by the record of votes of the members of your Committee on Water, Land, & Ocean Resources that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2986, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2986, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Water, Land, &
Ocean Resources,


EZRA R. KANOHO, Chair



