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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*, 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 46-1.5, Hawaii Revised Statutes, is  
16 amended to read as follows:



1           "§46-1.5 General powers and limitation of the counties.

2 Subject to general law, each county shall have the following  
3 powers and shall be subject to the following liabilities and  
4 limitations:

5           (1) Each county shall have the power to frame and adopt a  
6 charter for its own self-government, which shall  
7 establish the county executive, administrative, and  
8 legislative structure and organization, including, but  
9 not limited to, the method of appointment or election  
10 of officials, their duties, responsibilities, and  
11 compensation, and the terms of their office;

12           (2) Each county shall have the power to provide for and  
13 regulate the marking and lighting of all buildings and  
14 other structures that may be obstructions or hazards  
15 to aerial navigation, so far as may be necessary or  
16 proper for the protection and safeguarding of life,  
17 health, and property;

18           (3) Each county shall have the power to enforce all claims  
19 on behalf of the county and approve all lawful claims  
20 against the county, but shall be prohibited from  
21 entering into, granting, or making in any manner any  
22 contract, authorization, allowance payment, or



1 liability contrary to the provisions of any county  
2 charter or general law;

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

7 (5) Each county shall have the power to maintain channels,  
8 whether natural or artificial, including their exits  
9 to the ocean, in suitable condition to carry off storm  
10 waters; and to remove from the channels, and from the  
11 shores and beaches, any debris that is likely to  
12 create an unsanitary condition or become a public  
13 nuisance; provided that, to the extent any of the  
14 foregoing work is a private responsibility, the  
15 responsibility may be enforced by the county in lieu  
16 of the work being done at public expense. Counties  
17 also shall have the power to construct, acquire by  
18 gift, purchase, or by the exercise of eminent domain,  
19 reconstruct, improve, better, extend, and maintain  
20 projects or undertakings for the control of and  
21 protection against floods and flood waters, including  
22 the power to drain and rehabilitate lands already



1 flooded, and to enact zoning ordinances providing that  
2 lands deemed subject to reasonable, periodic, or  
3 occasional flooding shall not be used for residence or  
4 other purposes in a manner as to endanger the health  
5 or safety of the occupants thereof, as required by the  
6 Federal Flood Insurance Act of 1956 (chapter 1025,  
7 Public Law 1016);

8 (6) Each county shall have the power to exercise the power  
9 of condemnation by eminent domain in accordance with  
10 section 46-61 when it is in the public interest to do  
11 so; provided that no county shall condemn and transfer  
12 private property to a private entity that had  
13 expressed an interest in purchasing the property for  
14 development or commercial purposes or private use,  
15 except in takings for public utilities, irrigation  
16 systems, and affordable housing and community  
17 developments;

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



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

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

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

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

17 (12) Each county shall have the power to enact and enforce  
18 ordinances necessary to prevent or summarily remove  
19 public nuisances and to compel the clearing or removal  
20 of any public nuisance, refuse, and uncultivated  
21 undergrowth from streets, sidewalks, public places,  
22 and unoccupied lots, and in these connections, to



1           impose and enforce liens upon the property for the  
2           cost to the county of removing and completing the  
3           necessary work where the owners fail, after reasonable  
4           notice, to comply with the ordinances. The authority  
5           provided by this paragraph shall not be self-  
6           executing, but shall become fully effective within a  
7           county only upon the enactment or adoption by the  
8           county of appropriate and particular laws, ordinances,  
9           or rules defining "public nuisances" with respect to  
10          each county's respective circumstances. The counties  
11          shall provide the property owner with the opportunity  
12          to contest the summary action and to recover the  
13          owner's property;

- 14          (13) Each county shall have the power to enact ordinances  
15          deemed necessary to protect health, life, and  
16          property, and to preserve the order and security of  
17          the county and its inhabitants on any subject or  
18          matter not inconsistent with, or tending to defeat,  
19          the intent of any state statute, provided also that  
20          the statute does not disclose an express or implied  
21          intent that the statute shall be exclusive or uniform  
22          throughout the State;



1           (14) Each county shall have the power to make and enforce  
2           within the limits of the county all necessary  
3           ordinances covering: all local police matters; all  
4           matters of sanitation; all matters of inspection of  
5           buildings; all matters of condemnation of unsafe  
6           structures, plumbing, sewers, dairies, milk, fish, and  
7           morgues; all matters of the collection and disposition  
8           of rubbish and garbage; and to provide exemptions for  
9           homeless facilities and any other program for the  
10          homeless authorized by chapter 201G, for all matters  
11          under this paragraph; and to appoint county physicians  
12          and sanitary and other inspectors as necessary to  
13          carry into effect ordinances made under this  
14          paragraph, who shall have the same power as given by  
15          law to agents of the department of health, subject  
16          only to limitations placed on them by the terms and  
17          conditions of their appointments; and to fix a penalty  
18          for the violation of any ordinance, which penalty may  
19          be a misdemeanor, petty misdemeanor, or violation as  
20          defined by general law;

21          (15) Each county shall have the power to provide public  
22          pounds, to regulate the impounding of stray animals



1 and fowl, and their disposition, and to provide for  
2 the appointment, powers, duties, and fees of animal  
3 control officers;

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

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

20 (18) Each county shall have the power to make  
21 appropriations in amounts deemed appropriate from any  
22 moneys in the treasury, for the purpose of community





1 promotion and public celebrations, the entertainment  
2 of distinguished persons as may from time to time  
3 visit the county, for the entertainment of other  
4 distinguished persons as well as public officials when  
5 deemed to be in the best interest of the community,  
6 and the rendering of civic tribute to individuals who,  
7 by virtue of their accomplishments and community  
8 service, merit civic commendations, recognition, or  
9 remembrance;

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

11 (A) Construct, purchase, take on lease, lease,  
12 sublease, or in any other manner acquire, manage,  
13 maintain, or dispose of buildings for county  
14 purposes, sewers, sewer systems, pumping  
15 stations, waterworks, including reservoirs,  
16 wells, pipelines, and other conduits for  
17 distributing water to the public, lighting  
18 plants, and apparatus and appliances for lighting  
19 streets and public buildings and manage,  
20 regulate, and control the same;

21 (B) Regulate and control the location and quality of  
22 all appliances necessary to the furnishing of



1 water, heat, light, power, telephonic, and  
2 telegraphic service to the county;

3 (C) Acquire, regulate, and control any and all  
4 appliances for the sprinkling and cleaning of the  
5 streets and the public ways and for flushing the  
6 sewers; and

7 (D) Open, close, construct, or maintain county  
8 highways or charge toll on county highways;  
9 provided that all revenues received from a toll  
10 charge shall be used for the construction or  
11 maintenance of county highways;

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

15 (21) Unless otherwise provided by law, each county shall  
16 have the power to establish by ordinance the order of  
17 succession of county officials in the event of a  
18 military or civil disaster;

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

21 (23) Each county shall have the power to establish and  
22 maintain waterworks and sewer works; to collect rates



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1 for water supplied to consumers and for the use of  
2 sewers; to install water meters whenever deemed  
3 expedient; provided that owners of premises having  
4 vested water rights under existing laws appurtenant to  
5 the premises shall not be charged for the installation  
6 or use of the water meters on the premises; to take  
7 over from the State existing waterworks systems,  
8 including water rights, pipelines, and other  
9 appurtenances belonging thereto, and sewer systems,  
10 and to enlarge, develop, and improve the same;

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



1           (B) Each county by ordinance may provide for the  
2           addition of any unpaid civil fines, ordered by  
3           any court of competent jurisdiction, to any  
4           taxes, fees, or charges, with the exception of  
5           fees or charges for water for residential use and  
6           sewer charges collected by the county. Each  
7           county by ordinance may also provide for the  
8           addition of any unpaid administratively imposed  
9           civil fines, which remain due after all judicial  
10          review rights under section 91-14 are exhausted,  
11          to any taxes, fees, or charges, with the  
12          exception of water for residential use and sewer  
13          charges, collected by the county. The ordinance  
14          shall specify the administrative procedures for  
15          the addition of the unpaid civil fines to the  
16          eligible taxes, fees, or charges and may require  
17          hearings or other proceedings. After addition of  
18          the unpaid civil fines to the taxes, fees, or  
19          charges, the unpaid civil fines shall not become  
20          a part of any taxes, fees, or charges. The  
21          county by ordinance may condition the issuance or  
22          renewal of a license, approval, or permit for



1           which a fee or charge is assessed, except for  
2           water for residential use and sewer charges, on  
3           payment of the unpaid civil fines. Upon  
4           recordation of a notice of unpaid civil fines in  
5           the bureau of conveyances, the amount of the  
6           civil fines, including any increase in the amount  
7           of the fine which the county may assess, shall  
8           constitute a lien upon all real property or  
9           rights to real property belonging to any person  
10          liable for the unpaid civil fines. The lien in  
11          favor of the county shall be subordinate to any  
12          lien in favor of any person recorded or  
13          registered prior to the recordation of the notice  
14          of unpaid civil fines and senior to any lien  
15          recorded or registered after the recordation of  
16          the notice. The lien shall continue until the  
17          unpaid civil fines are paid in full or until a  
18          certificate of release or partial release of the  
19          lien, prepared by the county at the owner's  
20          expense, is recorded. The notice of unpaid civil  
21          fines shall state the amount of the fine as of  
22          the date of the notice and maximum permissible



1           daily increase of the fine. The county shall not  
2           be required to include a social security number,  
3           state general excise taxpayer identification  
4           number, or federal employer identification number  
5           on the notice. Recordation of the notice in the  
6           bureau of conveyances shall be deemed, at such  
7           time, for all purposes and without any further  
8           action, to procure a lien on land registered in  
9           land court under chapter 501. After the unpaid  
10          civil fines are added to the taxes, fees, or  
11          charges as specified by county ordinance, the  
12          unpaid civil fines shall be deemed immediately  
13          due, owing and delinquent and may be collected in  
14          any lawful manner. The procedure for collection  
15          of unpaid civil fines authorized in this  
16          paragraph shall be in addition to any other  
17          procedures for collection available to the State  
18          and county by law or rules of the courts;

19          (C) Each county may impose civil fines upon any  
20          person who places graffiti on any real or  
21          personal property owned, managed, or maintained  
22          by the county. The fine may be up to \$1,000 or



1           may be equal to the actual cost of having the  
2           damaged property repaired or replaced. The  
3           parent or guardian having custody of a minor who  
4           places graffiti on any real or personal property  
5           owned, managed, or maintained by the county shall  
6           be jointly and severally liable with the minor  
7           for any civil fines imposed hereunder. Any such  
8           fine may be administratively imposed after an  
9           opportunity for a hearing under chapter 91, but  
10          such a proceeding shall not be a prerequisite for  
11          any civil fine ordered by any court. As used in  
12          this subparagraph, "graffiti" means any  
13          unauthorized drawing, inscription, figure, or  
14          mark of any type intentionally created by paint,  
15          ink, chalk, dye, or similar substances;

16          (D) At the completion of an appeal in which the  
17          county's enforcement action is affirmed and upon  
18          correction of the violation if requested by the  
19          violation, the case will be reviewed by the county  
20          agency that imposed the civil fines to determine  
21          the appropriateness of the amount of the civil  
22          fines that accrued while the appeal proceedings



1           were pending. In its review of the amount of the  
2           accrued fines, the county agency may consider the  
3           following: nature and egregiousness of the  
4           violation, duration of the violation, number of  
5           recurring and other similar violations, effort  
6           taken by the violator to correct the violation,  
7           degree of involvement in causing or continuing  
8           the violation, reasons for any delay in the  
9           completion of the appeal, and other extenuating  
10          circumstances. The civil fine which is imposed  
11          by administrative order after this review is  
12          completed and the violation is corrected is  
13          subject to only judicial review, notwithstanding  
14          any provisions for administrative review in  
15          county charters;

16          (E) After completion of a review of the amount of  
17          accrued civil fine by the county agency which  
18          imposed the fine, the amount of the civil fine  
19          determined appropriate, including both the  
20          initial civil fine and any accrued daily civil  
21          fine, shall immediately become due and  
22          collectible following reasonable notice to the





1 violator. If no review of the accrued civil fine  
2 is requested, the amount of the civil fine, not  
3 to exceed the total accrual of civil fine prior  
4 to correcting the violation, shall immediately  
5 become due and collectible following reasonable  
6 notice to the violator, at the completion of all  
7 appeal proceedings;

8 (F) If no county agency exists to conduct appeal  
9 proceedings for a particular civil fine action  
10 taken by the county, then one shall be  
11 established by ordinance before the county shall  
12 impose that civil fine;

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



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

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

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

7 "§101-2 Taking private property for public use; disposal  
8 of excess property. Private property may be taken for public  
9 use[-]; provided that public use shall not include the  
10 condemning or transferring of private property to a private  
11 entity that expresses an interest in purchasing the property for  
12 development or commercial purposes or private use, except in  
13 takings for public utilities, irrigation systems, affordable  
14 housing and community developments, and the condemnation of  
15 development tracts. Private property may also be taken by the  
16 State or any county in excess of that needed for [sueh] the  
17 public use in cases where small remnants would otherwise be left  
18 or where other justifiable cause necessitates [sueh] the taking  
19 to protect and preserve the contemplated improvement, or public  
20 policy demands [sueh] the taking in connection with the  
21 improvement, in which case the condemning authority may sell or  
22 lease [sueh] the excess property, with [sueh] the restrictions



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



1 be 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~~] the excess property abuts  
 6 more than one parcel, the condemning authority may make  
 7 application for subdividing [~~such~~] the property so that a  
 8 portion thereof may be sold to each abutting owner at the  
 9 appraised value if the public interest is best served by [~~such~~]  
 10 the subdivision and disposal. All moneys received from the sale  
 11 or lease of [~~such~~] the excess property shall be paid into the  
 12 fund or appropriation from which money was taken for the  
 13 original condemnation and shall be available for the purposes of  
 14 [~~such~~] the fund or appropriation."

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

INTRODUCED BY:

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**Report Title:**

Eminent Domain

**Description:**

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

