

JAN 19 2007

A BILL FOR AN ACT

RELATING TO THE COUNTIES' EMINENT DOMAIN POWERS.

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

1 SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§46-1.5 General powers and limitation of the counties.**

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

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

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



1 proper for the protection and safeguarding of life,
2 health, and property.

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

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

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



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

15 (6) Each county shall have the power to exercise the power
16 of condemnation by eminent domain, in accordance with
17 section 46-61, when it is in the public interest to do
18 so.

19 (7) Each county shall have the power to exercise
20 regulatory powers over business activity as are
21 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 for the improvement or maintenance
6 assessments 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
6 self-executing, but shall become fully effective
7 within a county only upon the enactment or adoption by
8 the county of appropriate and particular laws,
9 ordinances, or rules defining "public nuisances" with
10 respect to each county's respective circumstances.
11 The counties shall provide the property owner with the
12 opportunity to contest the summary action and to
13 recover the 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 201H, 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 [7],
13 provided that a county shall be entitled to sell or
14 dispose of such property when implementing chapter 38,
15 Revised Ordinances of Honolulu 1990, or a similar
16 ordinance; and all proceeds from the sale of park
17 lands shall be expended only for the acquisition of
18 property for park or recreational purposes.

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



- 1 (18) Each county shall have the power to make
2 appropriations in amounts deemed appropriate from any
3 moneys in the treasury, for the purpose of community
4 promotion and public celebrations, the entertainment
5 of distinguished persons as may from time to time
6 visit the county, for the entertainment of other
7 distinguished persons as well as public officials when
8 deemed to be in the best interest of the community,
9 and the rendering of civic tribute to individuals who,
10 by virtue of their accomplishments and community
11 service, merit civic commendations, recognition, or
12 remembrance.
- 13 (19) Each county shall have the power to:
- 14 (A) Construct, purchase, take on lease, lease,
15 sublease, or in any other manner acquire, manage,
16 maintain, or dispose of buildings for county
17 purposes, sewers, sewer systems, pumping
18 stations, waterworks, including reservoirs,
19 wells, pipelines, and other conduits for
20 distributing water to the public, lighting
21 plants, and apparatus and appliances for lighting



- 1 streets and public buildings and manage,
2 regulate, and control the same;
- 3 (B) Regulate and control the location and quality of
4 all appliances necessary to the furnishing of
5 water, heat, light, power, telephonic, and
6 telegraphic service to the county;
- 7 (C) Acquire, regulate, and control any and all
8 appliances for the sprinkling and cleaning of the
9 streets and the public ways and for flushing the
10 sewers; and
- 11 (D) Open, close, construct, or maintain county
12 highways or charge toll on county highways;
13 provided that all revenues received from a toll
14 charge shall be used for the construction or
15 maintenance of county highways.
- 16 (20) Each county shall have the power to regulate the
17 renting, subletting, and rental conditions of property
18 for places of abode by ordinance.
- 19 (21) Unless otherwise provided by law, each county shall
20 have the power to establish by ordinance the order of
21 succession of county officials in the event of a
22 military or civil disaster.



1 (22) Each county shall have the power to sue and be sued
2 in its corporate name.

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

15 (24) (A) Each county may impose civil fines, in addition
16 to criminal penalties, for any violation of
17 county ordinances or rules after reasonable
18 notice and requests to correct or cease the
19 violation have been made upon the violator. Any
20 administratively imposed civil fine shall not be
21 collected until after an opportunity for a
22 hearing under chapter 91. Any appeal shall be



1 filed within thirty days from the date of the
2 final written decision. These proceedings shall
3 not be a prerequisite for any civil fine or
4 injunctive relief ordered by the circuit court.

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



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

10 (C) Each county may impose civil fines upon any
11 person who places graffiti on any real or
12 personal property owned, managed, or maintained
13 by the county. The fine may be up to \$1,000 or
14 may be equal to the actual cost of having the
15 damaged property repaired or replaced. The
16 parent or guardian having custody of a minor who
17 places graffiti on any real or personal property
18 owned, managed, or maintained by the county shall
19 be jointly and severally liable with the minor
20 for any civil fines imposed hereunder. Any such
21 fine may be administratively imposed after an
22 opportunity for a hearing under chapter 91, but



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

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

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

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

21 (F) If no county agency exists to conduct appeal
22 proceedings for a particular civil fine action



1 taken by the county, then one shall be
2 established by ordinance before the county shall
3 impose that civil fine.

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

14 (26) Any county may establish a captive insurance company
15 pursuant to article 19, chapter 431.

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

18 SECTION 2. Section 46-61, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§46-61 Eminent domain; purposes for taking property.**

21 Each county shall have the following specific powers: To take
22 private property for the purpose of establishing, laying out,



1 extending and widening streets, avenues, boulevards, alleys, and
2 other public highways and roads; for pumping stations,
3 waterworks, reservoirs, wells, jails, police and fire stations,
4 city halls, office and other public buildings, cemeteries,
5 parks, playgrounds and public squares, public off-street parking
6 facilities and accommodations, land from which to obtain earth,
7 gravel, stones, and other material for the construction of roads
8 and other public works and for rights-of-way for drains, sewers,
9 pipe lines, aqueducts, and other conduits for distributing water
10 to the public; for flood control; for reclamation of swamp
11 lands; ~~[and] for other public [uses within the purview of~~
12 ~~section 101-2]~~ purposes similar to those set forth in chapter
13 516; for urban renewal consistent with chapter 53; and for
14 purposes similar to those set forth in chapter 38, Revised
15 Ordinances of Honolulu 1990, or a similar ordinance; and also to
16 take such excess over that needed for such public use or public
17 improvement in cases where small remnants would otherwise be
18 left or where other justifiable cause necessitates the taking to
19 protect and preserve the contemplated improvement or public
20 policy demands, the taking in connection with the improvement,
21 and to sell or lease the excess property with such restrictions
22 as may be dictated by considerations of public policy in order



1 to protect and preserve the improvement; provided that when the
2 excess property is disposed of by any county it shall be first
3 offered to the abutting owners for a reasonable length of time
4 and at a reasonable price if such owners fail to take the same
5 then it may be sold at public auction."

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

8 **"§101-2 Taking private property for public use; disposal**
9 **of excess property.** Private property may be taken for public
10 use. The counties may exercise their power of eminent domain to
11 acquire private property only for those public purposes set
12 forth in section 46-61 and those set forth in chapter 38,
13 Revised Ordinances of Honolulu 1990, or a similar ordinance.
14 Private property may also be taken by the State or any county in
15 excess of that needed for such public use in cases where small
16 remnants would otherwise be left or where other justifiable
17 cause necessitates such taking to protect and preserve the
18 contemplated improvement, or public policy demands such taking
19 in connection with the improvement, in which case the condemning
20 authority may sell or lease such excess property, with such
21 restrictions as may be dictated by considerations of public
22 policy in order to protect and preserve such improvements;



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



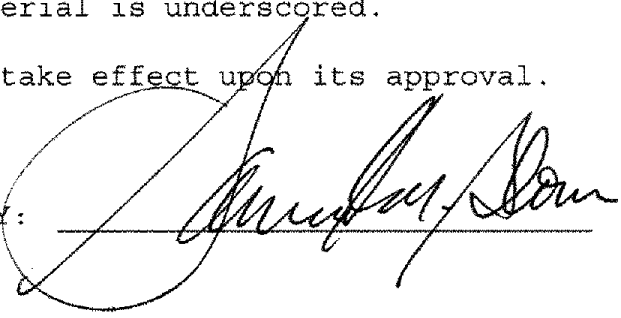
1 bid to the abutting owner submitting the highest offer above the
2 appraised value; provided further that if any such excess
3 property abuts more than one parcel, the condemning authority
4 may make application for subdividing such property so that a
5 portion thereof may be sold to each abutting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

12 SECTION 4. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

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

15

INTRODUCED BY: _____

A large, stylized handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to be the name of a legislator.

Report Title:

Counties' Eminent Domain Powers; Restriction; Public Use

Description:

Restricts the eminent domain powers of the counties to ensure that private property, if acquired by a county through its eminent domain powers, is acquired only for public uses and not for private use.

