

JAN 19 2007

A BILL FOR AN ACT

RELATING TO EMINENT DOMAIN POWERS.

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

1 SECTION 1. Section 101-2, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§101-2 Taking private property for public use; disposal**
4 **of excess property.** Private property may be taken for public
5 use[-]; provided that public use for purposes of eminent domain
6 powers shall not be construed to include the condemning of
7 private property and the subsequent transfer of that same
8 property to a private entity that expressed an interest in
9 purchasing that same property for development or commercial
10 purposes or private use before the condemnation. Private
11 property may also be taken by the State or any county in excess
12 of that needed for such public use in cases where small remnants
13 would otherwise be left or where other justifiable cause
14 necessitates such taking to protect and preserve the
15 contemplated improvement, or public policy demands such taking
16 in connection with the improvement, in which case the condemning
17 authority may sell or lease such excess property, with such



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

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

16 **"§46-1.5 General powers and limitation of the counties.**

17 Subject to general law, each county shall have the following
18 powers and shall be subject to the following liabilities and
19 limitations:

- 20 (1) Each county shall have the power to frame and adopt a
21 charter for its own self-government, which shall
22 establish the county executive, administrative, and



1 legislative structure and organization, including, but
2 not limited to, the method of appointment or election
3 of officials, their duties, responsibilities, and
4 compensation, and the terms of their office;

5 (2) Each county shall have the power to provide for and
6 regulate the marking and lighting of all buildings and
7 other structures that may be obstructions or hazards
8 to aerial navigation, so far as may be necessary or
9 proper for the protection and safeguarding of life,
10 health, and property;

11 (3) Each county shall have the power to enforce all claims
12 on behalf of the county and approve all lawful claims
13 against the county, but shall be prohibited from
14 entering into, granting, or making in any manner any
15 contract, authorization, allowance payment, or
16 liability contrary to the provisions of any county
17 charter or general law;

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



1 (5) Each county shall have the power to maintain channels,
2 whether natural or artificial, including their exits
3 to the ocean, in suitable condition to carry off storm
4 waters; and to remove from the channels, and from the
5 shores and beaches, any debris that is likely to
6 create an unsanitary condition or become a public
7 nuisance; provided that, to the extent any of the
8 foregoing work is a private responsibility, the
9 responsibility may be enforced by the county in lieu
10 of the work being done at public expense. Counties
11 also shall have the power to construct, acquire by
12 gift, purchase, or by the exercise of eminent domain,
13 reconstruct, improve, better, extend, and maintain
14 projects or undertakings for the control of and
15 protection against floods and flood waters, including
16 the power to drain and rehabilitate lands already
17 flooded, and to enact zoning ordinances providing that
18 lands deemed subject to seasonable, periodic, or
19 occasional flooding shall not be used for residence or
20 other purposes in a manner as to endanger the health
21 or safety of the occupants thereof, as required by the



1 Federal Flood Insurance Act of 1956 (chapter 1025,
2 Public Law 1016);

3 (6) Each county shall have the power to exercise the power
4 of condemnation by eminent domain, in accordance with
5 section 46-61, when it is in the public interest to do
6 so; provided that no county shall condemn private
7 property and subsequently transfer that same property
8 to a private entity that expressed an interest in
9 purchasing that same property for development or
10 commercial purposes or private use before the
11 condemnation.

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

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

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

21 (10) Except as otherwise provided, no county shall have the
22 power to give or loan credit to, or in aid of, any



1 person or corporation, directly or indirectly, except
2 for a public purpose;

3 (11) Where not within the jurisdiction of the public
4 utilities commission, each county shall have the power
5 to regulate by ordinance the operation of motor
6 vehicle common carriers transporting passengers within
7 the county and adopt and amend rules the county deems
8 necessary for the public convenience and necessity;

9 (12) Each county shall have the power to enact and enforce
10 ordinances necessary to prevent or summarily remove
11 public nuisances and to compel the clearing or removal
12 of any public nuisance, refuse, and uncultivated
13 undergrowth from streets, sidewalks, public places,
14 and unoccupied lots, and in these connections, to
15 impose and enforce liens upon the property for the
16 cost to the county of removing and completing the
17 necessary work where the owners fail, after reasonable
18 notice, to comply with the ordinances. The authority
19 provided by this paragraph shall not be self-
20 executing, but shall become fully effective within a
21 county only upon the enactment or adoption by the
22 county of appropriate and particular laws, ordinances,



1 or rules defining "public nuisances" with respect to
2 each county's respective circumstances. The counties
3 shall provide the property owner with the opportunity
4 to contest the summary action and to recover the
5 owner's property;

6 (13) Each county shall have the power to enact ordinances
7 deemed necessary to protect health, life, and
8 property, and to preserve the order and security of
9 the county and its inhabitants on any subject or
10 matter not inconsistent with, or tending to defeat,
11 the intent of any state statute, provided also that
12 the statute does not disclose an express or implied
13 intent that the statute shall be exclusive or uniform
14 throughout the State;

15 (14) Each county shall have the power to make and enforce
16 within the limits of the county all necessary
17 ordinances covering: all local police matters; all
18 matters of sanitation; all matters of inspection of
19 buildings; all matters of condemnation of unsafe
20 structures, plumbing, sewers, dairies, milk, fish, and
21 morgues; all matters of the collection and disposition
22 of rubbish and garbage; and to provide exemptions for



1 homeless facilities and any other program for the
2 homeless authorized by chapter 201H, for all matters
3 under this paragraph; and to appoint county physicians
4 and sanitary and other inspectors as necessary to
5 carry into effect ordinances made under this
6 paragraph, who shall have the same power as given by
7 law to agents of the department of health, subject
8 only to limitations placed on them by the terms and
9 conditions of their appointments; and to fix a penalty
10 for the violation of any ordinance, which penalty may
11 be a misdemeanor, petty misdemeanor, or violation as
12 defined by general law;

13 (15) Each county shall have the power to provide public
14 pounds, to regulate the impounding of stray animals
15 and fowl, and their disposition, and to provide for
16 the appointment, powers, duties, and fees of animal
17 control officers;

18 (16) Each county shall have the power to purchase and
19 otherwise acquire, lease, and hold real and personal
20 property within the defined boundaries of the county
21 and to dispose of the real and personal property as
22 the interests of the inhabitants of the county may



1 require, except that: any property held for school
2 purposes may not be disposed of without the consent of
3 the superintendent of education; no property bordering
4 the ocean shall be sold or otherwise disposed of; and
5 all proceeds from the sale of park lands shall be
6 expended only for the acquisition of property for park
7 or recreational purposes;

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

12 (18) Each county shall have the power to make
13 appropriations in amounts deemed appropriate from any
14 moneys in the treasury, for the purpose of community
15 promotion and public celebrations, the entertainment
16 of distinguished persons as may from time to time
17 visit the county, for the entertainment of other
18 distinguished persons as well as public officials when
19 deemed to be in the best interest of the community,
20 and the rendering of civic tribute to individuals who,
21 by virtue of their accomplishments and community



1 service, merit civic commendations, recognition, or
2 remembrance;

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

4 (A) Construct, purchase, take on lease, lease,
5 sublease, or in any other manner acquire, manage,
6 maintain, or dispose of buildings for county
7 purposes, sewers, sewer systems, pumping
8 stations, waterworks, including reservoirs,
9 wells, pipelines, and other conduits for
10 distributing water to the public, lighting
11 plants, and apparatus and appliances for lighting
12 streets and public buildings and manage,
13 regulate, and control the same;

14 (B) Regulate and control the location and quality of
15 all appliances necessary to the furnishing of
16 water, heat, light, power, telephonic, and
17 telegraphic service to the county;

18 (C) Acquire, regulate, and control any and all
19 appliances for the sprinkling and cleaning of the
20 streets and the public ways and for flushing the
21 sewers; and



- 1 (D) Open, close, construct, or maintain county
2 highways or charge toll on county highways;
3 provided that all revenues received from a toll
4 charge shall be used for the construction or
5 maintenance of county highways;
- 6 (20) Each county shall have the power to regulate the
7 renting, subletting, and rental conditions of property
8 for places of abode by ordinance;
- 9 (21) Unless otherwise provided by law, each county shall
10 have the power to establish by ordinance the order of
11 succession of county officials in the event of a
12 military or civil disaster;
- 13 (22) Each county shall have the power to sue and be sued in
14 its corporate name;
- 15 (23) Each county shall have the power to establish and
16 maintain waterworks and sewer works; to collect rates
17 for water supplied to consumers and for the use of
18 sewers; to install water meters whenever deemed
19 expedient; provided that owners of premises having
20 vested water rights under existing laws appurtenant to
21 the premises shall not be charged for the installation
22 or use of the water meters on the premises; to take



1 over from the State existing waterworks systems,
2 including water rights, pipelines, and other
3 appurtenances belonging thereto, and sewer systems,
4 and to enlarge, develop, and improve the same;

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

17 (B) Each county by ordinance may provide for the
18 addition of any unpaid civil fines, ordered by
19 any court of competent jurisdiction, to any
20 taxes, fees, or charges, with the exception of
21 fees or charges for water for residential use and
22 sewer charges collected by the county. Each



1 county by ordinance may also provide for the
2 addition of any unpaid administratively imposed
3 civil fines, which remain due after all judicial
4 review rights under section 91-14 are exhausted,
5 to any taxes, fees, or charges, with the
6 exception of water for residential use and sewer
7 charges, collected by the county. The ordinance
8 shall specify the administrative procedures for
9 the addition of the unpaid civil fines to the
10 eligible taxes, fees, or charges and may require
11 hearings or other proceedings. After addition of
12 the unpaid civil fines to the taxes, fees, or
13 charges, the unpaid civil fines shall not become
14 a part of any taxes, fees, or charges. The
15 county by ordinance may condition the issuance or
16 renewal of a license, approval, or permit for
17 which a fee or charge is assessed, except for
18 water for residential use and sewer charges, on
19 payment of the unpaid civil fines. Upon
20 recordation of a notice of unpaid civil fines in
21 the bureau of conveyances, the amount of the
22 civil fines, including any increase in the amount



1 of the fine which the county may assess, shall
2 constitute a lien upon all real property or
3 rights to real property belonging to any person
4 liable for the unpaid civil fines. The lien in
5 favor of the county shall be subordinate to any
6 lien in favor of any person recorded or
7 registered prior to the recordation of the notice
8 of unpaid civil fines and senior to any lien
9 recorded or registered after the recordation of
10 the notice. The lien shall continue until the
11 unpaid civil fines are paid in full or until a
12 certificate of release or partial release of the
13 lien, prepared by the county at the owner's
14 expense, is recorded. The notice of unpaid civil
15 fines shall state the amount of the fine as of
16 the date of the notice and maximum permissible
17 daily increase of the fine. The county shall not
18 be required to include a social security number,
19 state general excise taxpayer identification
20 number, or federal employer identification number
21 on the notice. Recordation of the notice in the
22 bureau of conveyances shall be deemed, at such



1 time, for all purposes and without any further
2 action, to procure a lien on land registered in
3 land court under chapter 501. After the unpaid
4 civil fines are added to the taxes, fees, or
5 charges as specified by county ordinance, the
6 unpaid civil fines shall be deemed immediately
7 due, owing and delinquent and may be collected in
8 any lawful manner. The procedure for collection
9 of unpaid civil fines authorized in this
10 paragraph shall be in addition to any other
11 procedures for collection available to the State
12 and county by law or rules of the courts;

13 (C) Each county may impose civil fines upon any
14 person who places graffiti on any real or
15 personal property owned, managed, or maintained
16 by the county. The fine may be up to \$1,000 or
17 may be equal to the actual cost of having the
18 damaged property repaired or replaced. The
19 parent or guardian having custody of a minor who
20 places graffiti on any real or personal property
21 owned, managed, or maintained by the county shall
22 be jointly and severally liable with the minor



1 for any civil fines imposed hereunder. Any such
2 fine may be administratively imposed after an
3 opportunity for a hearing under chapter 91, but
4 such a proceeding shall not be a prerequisite for
5 any civil fine ordered by any court. As used in
6 this subparagraph, "graffiti" means any
7 unauthorized drawing, inscription, figure, or
8 mark of any type intentionally created by paint,
9 ink, chalk, dye, or similar substances;

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



1 degree of involvement in causing or continuing
2 the violation, reasons for any delay in the
3 completion of the appeal, and other extenuating
4 circumstances. The civil fine which is imposed
5 by administrative order after this review is
6 completed and the violation is corrected is
7 subject to only judicial review, notwithstanding
8 any provisions for administrative review in
9 county charters;

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



1 notice to the violator, at the completion of all
2 appeal proceedings;

3 (F) If no county agency exists to conduct appeal
4 proceedings for a particular civil fine action
5 taken by the county, then one shall be
6 established by ordinance before the county shall
7 impose that civil fine;

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

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

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

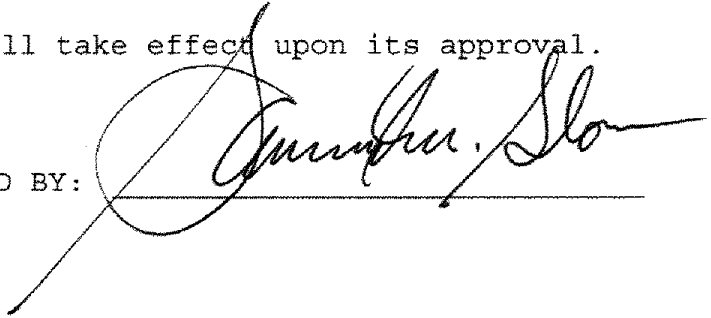
22 SECTION 3. New statutory material is underscored.



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY:



Report Title:

Eminent Domain Powers; Restrictions

Description:

Prohibits the State and counties from condemning private property for a private economic interest or a private entity who expressed an interest in developing that same property for development purposes or private use before the condemnation.

