

JAN 18 2008

A BILL FOR AN ACT

RELATING TO COUNTIES.

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 that 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:

15 (A) Maintain channels, whether natural or artificial,
16 including their exits to the ocean, in suitable
17 condition to carry off storm waters;

18 (B) Remove from the channels, and from the shores and
19 beaches, any debris that is likely to create an
20 unsanitary condition or become a public nuisance;
21 provided that, to the extent any of the foregoing
22 work is a private responsibility, the



1 responsibility may be enforced by the county in
2 lieu of the work being done at public expense;
3 (C) Construct, acquire by gift, purchase, or by the
4 exercise of eminent domain, reconstruct, improve,
5 better, extend, and maintain projects or
6 undertakings for the control of and protection
7 against floods and flood waters, including the
8 power to drain and rehabilitate lands already
9 flooded; and
10 (D) Enact zoning ordinances providing that lands
11 deemed subject to seasonable, periodic, or
12 occasional flooding shall not be used for
13 residence or other purposes in a manner as to
14 endanger the health or safety of the occupants
15 thereof, as required by the Federal Flood
16 Insurance Act of 1956 (chapter 1025, Public Law
17 1016);
18 (6) Each county shall have the power to exercise the power
19 of condemnation by eminent domain, exercised in
20 accordance with section 46-61, when it is in the
21 public interest to do so;



- 1 (7) Each county shall have the power to exercise
- 2 regulatory powers over business activity as are
- 3 assigned to them by chapter 445 or other general law;
- 4 (8) Each county shall have the power to fix the fees and
- 5 charges for all official services not otherwise
- 6 provided for;
- 7 (9) Each county shall have the power to provide by
- 8 ordinance assessments for the improvement or
- 9 maintenance of districts within the county;
- 10 (10) Except as otherwise provided, no county shall have the
- 11 power to give or loan credit to, or in aid of, any
- 12 person or corporation, directly or indirectly, except
- 13 for a public purpose;
- 14 (11) Where not within the jurisdiction of the public
- 15 utilities commission, each county shall have the power
- 16 to regulate by ordinance the operation of motor
- 17 vehicle common carriers transporting passengers within
- 18 the county and adopt and amend rules the county deems
- 19 necessary for the public convenience and necessity;
- 20 (12) Each county shall have the power to enact and enforce
- 21 ordinances necessary to prevent or summarily remove
- 22 public nuisances and to compel the clearing or removal



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

17 (13) Each county shall have the power to enact ordinances
18 deemed necessary to protect health, life, and
19 property, and to preserve the order and security of
20 the county and its inhabitants on any subject or
21 matter not inconsistent with, or tending to defeat,
22 the intent of any state statute where the statute does



1 not disclose an express or implied intent that the
2 statute shall be exclusive or uniform throughout the
3 State;

4 (14) Each county shall have the power to:

5 (A) Make and enforce within the limits of the county
6 all necessary ordinances covering all:

7 (i) Local police matters;

8 (ii) Matters of sanitation;

9 (iii) Matters of inspection of buildings;

10 (iv) Matters of condemnation of unsafe

11 structures, plumbing, sewers, dairies, milk,
12 fish, and morgues; and

13 (v) Matters of the collection and disposition of
14 rubbish and garbage;

15 (B) Provide exemptions for homeless facilities and
16 any other program for the homeless authorized by
17 chapter 356D, for all matters under this
18 paragraph;

19 (C) Appoint county physicians and sanitary and other
20 inspectors as necessary to carry into effect
21 ordinances made under this paragraph, who shall
22 have the same power as given by law to agents of



1 the department of health, subject only to
2 limitations placed on them by the terms and
3 conditions of their appointments; and

4 (D) Fix a penalty for the violation of any ordinance,
5 which penalty may be a misdemeanor, petty
6 misdemeanor, or violation as defined by general
7 law;

8 (15) Each county shall have the power to provide public
9 pounds; to regulate the impounding of stray animals
10 and fowl, and their disposition; and to provide for
11 the appointment, powers, duties, and fees of animal
12 control officers;

13 (16) Each county shall have the power to purchase and
14 otherwise acquire, lease, and hold real and personal
15 property within the defined boundaries of the county
16 and to dispose of the real and personal property as
17 the interests of the inhabitants of the county may
18 require, except that:

19 (A) Any property held for school purposes may not be
20 disposed of without the consent of the
21 superintendent of education;



- 1 (B) No property bordering the ocean shall be sold or
- 2 otherwise disposed of; and
- 3 (C) All proceeds from the sale of park lands shall be
- 4 expended only for the acquisition of property for
- 5 park or recreational purposes;
- 6 (17) Each county shall have the power to provide by charter
- 7 for the prosecution of all offenses and to prosecute
- 8 for offenses against the laws of the State under the
- 9 authority of the attorney general of the State;
- 10 (18) Each county shall have the power to make
- 11 appropriations in amounts deemed appropriate from any
- 12 moneys in the treasury, for the purpose of:
- 13 (A) Community promotion and public celebrations;
- 14 (B) The entertainment of distinguished persons as may
- 15 from time to time visit the county;
- 16 (C) The entertainment of other distinguished persons,
- 17 as well as, public officials when deemed to be in
- 18 the best interest of the community; and
- 19 (D) The rendering of civic tribute to individuals
- 20 who, by virtue of their accomplishments and
- 21 community service, merit civic commendations,
- 22 recognition, or remembrance;



- 1 (19) Each county shall have the power to:
- 2 (A) Construct, purchase, take on lease, lease,
- 3 sublease, or in any other manner acquire, manage,
- 4 maintain, or dispose of buildings for county
- 5 purposes, sewers, sewer systems, pumping
- 6 stations, waterworks, including reservoirs,
- 7 wells, pipelines, and other conduits for
- 8 distributing water to the public, lighting
- 9 plants, and apparatus and appliances for lighting
- 10 streets and public buildings, and manage,
- 11 regulate, and control the same;
- 12 (B) Regulate and control the location and quality of
- 13 all appliances necessary to the furnishing of
- 14 water, heat, light, power, telephone, and
- 15 telecommunications service to the county;
- 16 (C) Acquire, regulate, and control any and all
- 17 appliances for the sprinkling and cleaning of the
- 18 streets and the public ways, and for flushing the
- 19 sewers; and
- 20 (D) Open, close, construct, or maintain county
- 21 highways or charge toll on county highways;
- 22 provided that all revenues received from a toll

1 charge shall be used for the construction or
2 maintenance of county highways;

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

6 (21) Unless otherwise provided by law, each county shall
7 have the power to establish by ordinance the order of
8 succession of county officials in the event of a
9 military or civil disaster;

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

12 (23) Each county shall have the power to establish and
13 maintain waterworks and sewer works; to collect rates
14 for water supplied to consumers and for the use of
15 sewers; to install water meters whenever deemed
16 expedient; provided that owners of premises having
17 vested water rights under existing laws appurtenant to
18 the premises shall not be charged for the installation
19 or use of the water meters on the premises; to take
20 over from the State existing waterworks systems,
21 including water rights, pipelines, and other



1 appurtenances belonging thereto, and sewer systems,
2 and to enlarge, develop, and improve the same;

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

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



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



1 rights to real property belonging to any person
2 liable for the unpaid civil fines. The lien in
3 favor of the county shall be subordinate to any
4 lien in favor of any person recorded or
5 registered prior to the recordation of the notice
6 of unpaid civil fines and senior to any lien
7 recorded or registered after the recordation of
8 the notice. The lien shall continue until the
9 unpaid civil fines are paid in full or until a
10 certificate of release or partial release of the
11 lien, prepared by the county at the owner's
12 expense, is recorded. The notice of unpaid civil
13 fines shall state the amount of the fine as of
14 the date of the notice and maximum permissible
15 daily increase of the fine. The county shall not
16 be required to include a social security number,
17 state general excise taxpayer identification
18 number, or federal employer identification number
19 on the notice. Recordation of the notice in the
20 bureau of conveyances shall be deemed, at such
21 time, for all purposes and without any further
22 action, to procure a lien on land registered in



1 land court under chapter 501. After the unpaid
2 civil fines are added to the taxes, fees, or
3 charges as specified by county ordinance, the
4 unpaid civil fines shall be deemed immediately
5 due, owing, and delinquent and may be collected
6 in any lawful manner. The procedure for
7 collection of unpaid civil fines authorized in
8 this paragraph shall be in addition to any other
9 procedures for collection available to the State
10 and county by law or rules of the courts;

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



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

8 (D) At the completion of an appeal in which the
9 county's enforcement action is affirmed and upon
10 correction of the violation if requested by the
11 violator, the case shall be reviewed by the
12 county agency that imposed the civil fines to
13 determine the appropriateness of the amount of
14 the civil fines that accrued while the appeal
15 proceedings were pending. In its review of the
16 amount of the accrued fines, the county agency
17 may consider:

18 (i) The nature and egregiousness of the
19 violation;

20 (ii) The duration of the violation;

21 (iii) The number of recurring and other similar
22 violations;



- 1 (iv) Any effort taken by the violator to correct
- 2 the violation;
- 3 (v) The degree of involvement in causing or
- 4 continuing the violation;
- 5 (vi) Reasons for any delay in the completion of
- 6 the appeal; and
- 7 (vii) Other extenuating circumstances.

8 The civil fine that is imposed by administrative
9 order after this review is completed and the
10 violation is corrected shall be subject to
11 judicial review, notwithstanding any provisions
12 for administrative review in county charters;

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



1 to correcting the violation, shall immediately
2 become due and collectible following reasonable
3 notice to the violator, at the completion of all
4 appeal proceedings;

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

10 (25) Any law to the contrary notwithstanding, any county
11 mayor may exempt by executive order donors, provider
12 agencies, homeless facilities, and any other program
13 for the homeless under chapter 356D from real property
14 taxes, water and sewer development fees, rates
15 collected for water supplied to consumers and for use
16 of sewers, and any other county taxes, charges, or
17 fees; provided that any county may enact ordinances to
18 regulate and grant the exemptions granted by this
19 paragraph;

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



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

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

5 "§46-61 Eminent domain; purposes for taking property.

6 Each county shall have the following specific powers: To take
7 private property for the purpose of establishing, laying out,
8 extending and widening streets, avenues, boulevards, alleys, and
9 other public highways and roads; for pumping stations,
10 waterworks, reservoirs, wells, jails, police and fire stations,
11 city halls, office and other public buildings, cemeteries,
12 parks, playgrounds and public squares, public off-street parking
13 facilities and accommodations, land from which to obtain earth,
14 gravel, stones, and other material for the construction of roads
15 and other public works and for rights-of-way for drains, sewers,
16 pipe lines, aqueducts, and other conduits for distributing water
17 to the public; for flood control; for reclamation of swamp
18 lands; [~~and other public uses within the purview of section 101-~~
19 2] for residential leasehold condemnation purposes similar to
20 chapter 516 or for urban renewal purposes under section 53-8;
21 and also to take [~~sueh~~] the excess over that needed for [~~sueh~~]
22 the public use or public improvement in cases where small



1 remnants would otherwise be left or where other justifiable
2 cause necessitates the taking to protect and preserve the
3 contemplated improvement or public policy demands, the taking in
4 connection with the improvement, and to sell or lease the excess
5 property with [such] restrictions as may be dictated by
6 considerations of public policy in order to protect and preserve
7 the improvement; provided that when the excess property is
8 disposed of by any county it shall be first offered to the
9 abutting owners for a reasonable length of time and at a
10 reasonable price and if [such] the abutting owners fail to take
11 the same then it may be sold at public auction."

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

14 **"§101-2 Taking private property for public use; disposal**
15 **of excess property.** Private property may be taken for public
16 use. The counties may exercise the power of eminent domain to
17 take private property only for those public purposes set forth
18 in section 46-61. Private property may also be taken by the
19 State or any county in excess of that needed for [such] public
20 use in cases where small remnants would otherwise be left or
21 where other justifiable cause necessitates [such] the taking to
22 protect and preserve the contemplated improvement, or public



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



1 requirements of the applicable zoning regulations, is of a
 2 configuration or topography which in the judgment of the
 3 appropriate county zoning authority cannot be put to a
 4 reasonable use in accordance with applicable zoning regulations,
 5 or lacks proper access to a street, it shall be sold by the
 6 condemning authority by sealed bid to the abutting owner
 7 submitting the highest offer above the appraised value; provided
 8 further that if any [sueh] excess property abuts more than one
 9 parcel, the condemning authority may make application for
 10 subdividing [sueh] the property so that a portion thereof may be
 11 sold to each abutting owner at the appraised value if the public
 12 interest is best served by [sueh] the subdivision and disposal.
 13 All moneys received from the sale or lease of [sueh] the excess
 14 property shall be paid into the fund or appropriation from which
 15 money was taken for the original condemnation and shall be
 16 available for the purposes of [sueh] the fund or appropriation."

17 SECTION 4. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

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

20

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S.B. NO. 2575

Amil y Jye
Norman Sakam



Report Title:

Counties; Eminent Domain; 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 uses.

