

STAND. COM. REP. NO.

194

Honolulu, Hawaii

FEB 12 2007

RE: S.B. No. 1279
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Water, Land, Agriculture, and Hawaiian Affairs, to which was referred S.B. No. 1279 entitled:

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

begs leave to report as follows:

The purpose of this measure is to protect the property rights of real property owners by requiring that government entities granted with the power of eminent domain offer to resell any real property taken by eminent domain to the original property owner if the property taken is not used for the purpose for which it was condemned.

Testimony in support of this measure was submitted by the Hawaii Association of Realtors, Kamehameha Schools, the National Federation of Independent Businesses, the Hawaii Farm Bureau Federation, and the Maui County Farm Bureau. Testimony in opposition to this measure was submitted by the Department of the Corporation Counsel, City and County of Honolulu.

There are two constitutional requirements for the exercise of eminent domain. The property taken must be for a public purpose and the property owner is entitled to receive just compensation. There are many instances where condemned property sits idle for years until plans are realized. If the purported public purpose of the condemned property is never realized, the government may sell the property to the highest bidder, which is usually not the original owner of the condemned property.



Your Committee finds that condemnation actions should occur only when necessary and when a viable plan is in place for the condemned property. Despite being entitled to just compensation, owners of condemned property still incur financial and emotional stress from losing their property rights and being forced to relocate their homes or businesses. This stress is heightened when the condemned property sits idle for years because a viable plan for the property is not available, or when the condemned property is sold to someone else who placed the highest bid. Requiring a government entity after five years to offer the right of first refusal to the owner of the condemned for resale at the current appraised value, or condemnation price plus remediation or improvement costs if the property taken is not used for the purpose for which it was condemned will prevent condemned property from sitting idle.

Your Committee has two concerns regarding the language in this measure that it believes needs further clarification. First, your Committee finds that the language referring to "condemnation resolution or other legislation or declaration authorizing the condemnation" needs further clarification as to which documents are included in this phrase. Second, your Committee believes that the sixty-day notice requirement of the right of first refusal needs further clarification as to what actual point the notice requirement is triggered. While your Committee has these concerns, it believes that dialogue should be continued by the Committee on Judiciary and Labor, where these matters can be more appropriately addressed. Furthermore, your Committee hopes at that time, the Department of the Attorney General will also provide testimony and input regarding this measure.

The Hawaii Association of Realtors indicated to your Committee that allowing property owners to request a judicial declaratory ruling on the purported purpose prior to the condemnation action will provide an additional mechanism to ensure that properties are condemned only for public purposes. Furthermore, a declaratory ruling will also serve as a benchmark in the future, if the condemned property fails to be used or developed for a public purpose.

Accordingly, your Committee has amended this measure by:

- (1) Adopting the suggestion made by the Hawaii Association of Realtors and including additional language to allow a property owner or an individual with an interest in the



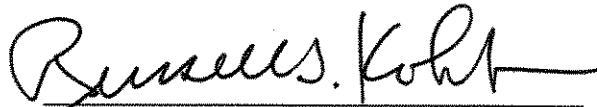
property to be condemned to request a declaratory ruling to determine if the condemnation action by a government entity is for public use; and

- (2) Making technical and nonsubstantive amendments for the purposes of style and consistency.

Your Committee believes that the amended measure will assist in leveling the playing field for real property owners and protect their real property interests, which fulfills the intent of this measure.

As affirmed by the record of votes of the members of your Committee on Water, Land, Agriculture, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1279, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1279, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on
behalf of the members of the
Committee on Water, Land,
Agriculture, and Hawaiian
Affairs,

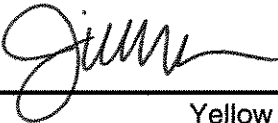


RUSSELL S. KOKUBUN, Chair



The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Water, Land, Agriculture and Hawaiian Affairs
WAH

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 1279	WAH, JDL	FEB. 05, 2007		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KOKUBUN, Russell S. (C)	X			
TOKUDA, Jill N. (VC)	X			
FUKUNAGA, Carol	X			
HEE, Clayton				X
SLOM, Sam	X			
TOTAL	4			1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink		
File with Committee Report	Clerk's Office	Drafting Agency		

*Only one measure per Record of Votes