

JAN 26 2009

A BILL FOR AN ACT

RELATING TO EMINENT DOMAIN.

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

1 SECTION 1. In *Kelo v. City of New London*, 545 U.S. 469
2 (2005), the United States Supreme Court narrowly held that a
3 city could exercise its eminent domain power by transferring
4 property from one private party to another to promote economic
5 development. However, the United States Supreme Court
6 emphasized that nothing in its opinion precluded any state from
7 placing stricter restrictions on eminent domain power and noted
8 that many states had already imposed standards stricter than the
9 federal standard.

10 The legislature finds that while many states have adopted
11 legislation curbing the power of eminent domain and protecting
12 the rights of private property owners in response to *Kelo v.*
13 *City of New London, supra*, Hawaii has not yet adopted any such
14 legislation. The legislature further finds that an expansive
15 application of eminent domain power could be a threat to
16 property rights of private property owners, and that
17 governmental entities should not take private property to



1 transfer to private entities for economic development or
2 redevelopment or for private use.

3 The purpose of this Act is to prohibit the use of the power
4 of eminent domain to take property owned by a charitable
5 organization and transfer it to a private entity for development
6 purposes or other private use.

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

9 **"§46-1.5 General powers and limitation of the counties.**

10 Subject to general law, each county shall have the following
11 powers and shall be subject to the following liabilities and
12 limitations:

13 (1) Each county shall have the power to frame and adopt a
14 charter for its own self-government that shall
15 establish the county executive, administrative, and
16 legislative structure and organization, including but
17 not limited to the method of appointment or election
18 of officials, their duties, responsibilities, and
19 compensation, and the terms of their office;

20 (2) Each county shall have the power to provide for and
21 regulate the marking and lighting of all buildings and
22 other structures that may be obstructions or hazards



1 to aerial navigation, so far as may be necessary or
2 proper for the protection and safeguarding of life,
3 health, and property;

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

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

15 (5) Each county shall have the power to:

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

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



1 work is a private responsibility, the
2 responsibility may be enforced by the county in
3 lieu of the work being done at public expense;

4 (C) Construct, acquire by gift, purchase, or by the
5 exercise of eminent domain, reconstruct, improve,
6 better, extend, and maintain projects or
7 undertakings for the control of and protection
8 against floods and flood waters, including the
9 power to drain and rehabilitate lands already
10 flooded; and

11 (D) Enact zoning ordinances providing that lands
12 deemed subject to seasonable, periodic, or
13 occasional flooding shall not be used for
14 residence or other purposes in a manner as to
15 endanger the health or safety of the occupants
16 thereof, as required by the Federal Flood
17 Insurance Act of 1956 (chapter 1025, Public Law
18 1016);

19 (6) Each county shall have the power to exercise the power
20 of condemnation by eminent domain in accordance with
21 section 46-61 when it is in the public interest to do
22 so; provided that no county shall condemn and transfer



1 any property owned, in whole or in part, by a
2 charitable organization, to a private entity for
3 development purposes or other private use, including
4 but not limited to industrial, residential,
5 agricultural, or commercial use.

6 As used in this paragraph, "charitable
7 organization" shall be as determined by the Internal
8 Revenue Service to be a tax exempt organization
9 pursuant to section 501(c)(3) of the Internal Revenue
10 Code of 1986, as amended;

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

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

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

20 (10) Except as otherwise provided, no county shall have the
21 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. In connection with these powers,
15 each county may impose and enforce liens upon the
16 property for the cost to the county of removing and
17 completing the necessary work where the property
18 owners fail, after reasonable notice, to comply with
19 the ordinances. The authority provided by this
20 paragraph shall not be self-executing, but shall
21 become fully effective within a county only upon the
22 enactment or adoption by the county of appropriate and



1 particular laws, ordinances, or rules defining "public
2 nuisances" with respect to each county's respective
3 circumstances. The counties shall provide the
4 property owner with the opportunity to contest the
5 summary action and to recover the 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 where the statute does
12 not disclose an express or implied intent that the
13 statute shall be exclusive or uniform throughout the
14 State;

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

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

18 (i) Local police matters;

19 (ii) Matters of sanitation;

20 (iii) Matters of inspection of buildings;



1 (iv) Matters of condemnation of unsafe
2 structures, plumbing, sewers, dairies, milk,
3 fish, and morgues; and

4 (v) Matters of the collection and disposition of
5 rubbish and garbage;

6 (B) Provide exemptions for homeless facilities and
7 any other program for the homeless authorized by
8 chapter 201H or 356D, for all matters under this
9 paragraph;

10 (C) Appoint county physicians and sanitary and other
11 inspectors as necessary to carry into effect
12 ordinances made under this paragraph, who shall
13 have the same power as given by law to agents of
14 the department of health, subject only to
15 limitations placed on them by the terms and
16 conditions of their appointments; and

17 (D) Fix a penalty for the violation of any ordinance,
18 which penalty may be a misdemeanor, petty
19 misdemeanor, or violation as defined by general
20 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:

10 (A) Any property held for school purposes may not be
11 disposed of without the consent of the
12 superintendent of education;

13 (B) No property bordering the ocean shall be sold or
14 otherwise disposed of; and

15 (C) All proceeds from the sale of park lands shall be
16 expended only for the acquisition of property for
17 park or recreational purposes;

18 (17) Each county shall have the power to provide by charter
19 for the prosecution of all offenses and to prosecute
20 for offenses against the laws of the State under the
21 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:
- 4 (A) Community promotion and public celebrations;
 - 5 (B) The entertainment of distinguished persons as may
6 from time to time visit the county;
 - 7 (C) The entertainment of other distinguished persons,
8 as well as, public officials when deemed to be in
9 the best interest of the community; and
 - 10 (D) The rendering of civic tribute to individuals
11 who, by virtue of their accomplishments and
12 community service, merit civic commendations,
13 recognition, or remembrance;
- 14 (19) Each county shall have the power to:
- 15 (A) Construct, purchase, take on lease, lease,
16 sublease, or in any other manner acquire, manage,
17 maintain, or dispose of buildings for county
18 purposes, sewers, sewer systems, pumping
19 stations, waterworks, including reservoirs,
20 wells, pipelines, and other conduits for
21 distributing water to the public, lighting
22 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, telephone, and
6 telecommunications 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 in
2 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;

(B) 5 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 addition of
22 the unpaid civil fines to the taxes, fees, or



1 charges, the unpaid civil fines shall not become
2 a part of any taxes, fees, or charges. The
3 county by ordinance may condition the issuance or
4 renewal of a license, approval, or permit for
5 which a fee or charge is assessed, except for
6 water for residential use and sewer charges, on
7 payment of the unpaid civil fines. Upon
8 recordation of a notice of unpaid civil fines in
9 the bureau of conveyances, the amount of the
10 civil fines, including any increase in the amount
11 of the fine which the county may assess, shall
12 constitute a lien upon all real property or
13 rights to real property belonging to any person
14 liable for the unpaid civil fines. The lien in
15 favor of the county shall be subordinate to any
16 lien in favor of any person recorded or
17 registered prior to the recordation of the notice
18 of unpaid civil fines and senior to any lien
19 recorded or registered after the recordation of
20 the notice. The lien shall continue until the
21 unpaid civil fines are paid in full or until a
22 certificate of release or partial release of the



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



- 1 (C) Each county may impose civil fines upon any
2 person who places graffiti on any real or
3 personal property owned, managed, or maintained
4 by the county. The fine may be up to \$1,000 or
5 may be equal to the actual cost of having the
6 damaged property repaired or replaced. The
7 parent or guardian having custody of a minor who
8 places graffiti on any real or personal property
9 owned, managed, or maintained by the county shall
10 be jointly and severally liable with the minor
11 for any civil fines imposed hereunder. Any such
12 fine may be administratively imposed after an
13 opportunity for a hearing under chapter 91, but
14 such a proceeding shall not be a prerequisite for
15 any civil fine ordered by any court. As used in
16 this subparagraph, "graffiti" means any
17 unauthorized drawing, inscription, figure, or
18 mark of any type intentionally created by paint,
19 ink, chalk, dye, or similar substances;
- 20 (D) At the completion of an appeal in which the
21 county's enforcement action is affirmed and upon
22 correction of the violation if requested by the



1 violator, the case shall be reviewed by the
2 county agency that imposed the civil fines to
3 determine the appropriateness of the amount of
4 the civil fines that accrued while the appeal
5 proceedings were pending. In its review of the
6 amount of the accrued fines, the county agency
7 may consider:

- 8 (i) The nature and egregiousness of the
9 violation;
- 10 (ii) The duration of the violation;
- 11 (iii) The number of recurring and other similar
12 violations;
- 13 (iv) Any effort taken by the violator to correct
14 the violation;
- 15 (v) The degree of involvement in causing or
16 continuing the violation;
- 17 (vi) Reasons for any delay in the completion of
18 the appeal; and
- 19 (vii) Other extenuating circumstances.

20 The civil fine that is imposed by administrative
21 order after this review is completed and the
22 violation is corrected shall be subject to



1 judicial review, notwithstanding any provisions
2 for administrative review in county charters;
3 (E) After completion of a review of the amount of
4 accrued civil fine by the county agency that
5 imposed the fine, the amount of the civil fine
6 determined appropriate, including both the
7 initial civil fine and any accrued daily civil
8 fine, shall immediately become due and
9 collectible following reasonable notice to the
10 violator. If no review of the accrued civil fine
11 is requested, the amount of the civil fine, not
12 to exceed the total accrual of civil fine prior
13 to correcting the violation, shall immediately
14 become due and collectible following reasonable
15 notice to the violator, at the completion of all
16 appeal proceedings;
17 (F) If no county agency exists to conduct appeal
18 proceedings for a particular civil fine action
19 taken by the county, then one shall be
20 established by ordinance before the county shall
21 impose the civil fine;



1 (25) Any law to the contrary notwithstanding, any county
 2 mayor may exempt by executive order donors, provider
 3 agencies, homeless facilities, and any other program
 4 for the homeless under chapter 201H or 356D from real
 5 property taxes, water and sewer development fees,
 6 rates collected for water supplied to consumers and
 7 for use of sewers, and any other county taxes,
 8 charges, or fees; provided that any county may enact
 9 ordinances to regulate and grant the exemptions
 10 granted by this paragraph;

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

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

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

17 **"§101-2 Taking private property for public use; disposal**
 18 **of excess property.** Private property may be taken for public
 19 use[-]; provided that public use shall not include the
 20 condemnation and transfer of any property owned, in whole or in
 21 part, by a charitable organization, to a private entity for
 22 development purposes or other private use, including but not



1 limited to industrial, residential, agricultural, or commercial
2 use. Private property may also be taken by the State or any
3 county in excess of that needed for [~~such~~] the public use in
4 cases where small remnants would otherwise be left or where
5 other justifiable cause necessitates [~~such~~] the taking to
6 protect and preserve the contemplated improvement, or public
7 policy demands [~~such~~] the taking in connection with the
8 improvement, in which case the condemning authority may sell or
9 lease [~~such~~] the excess property, with [~~such~~] the restrictions
10 as may be dictated by considerations of public policy in order
11 to protect and preserve [~~such~~] the improvements; provided that
12 in the disposal of [~~any such~~] the excess property, if [~~such~~] the
13 property is less than the minimum lot size requirements of the
14 applicable zoning regulations, is of a configuration or
15 topography which in the judgment of the appropriate county
16 zoning authority cannot be put to a reasonable use in accordance
17 with the applicable zoning regulations, or lacks proper access
18 to a street, it shall be offered to the owner or owners of the
19 abutting land for a reasonable price based on an appraisal;
20 provided further that if [~~such~~] the excess property conforms to
21 [~~said~~] the minimum lot size requirements, is of a configuration
22 and topography which in the judgment of the appropriate county



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



1 For purposes of this section, "charitable organization"
2 shall be as determined by the Internal Revenue Service to be a
3 tax exempt organization pursuant to section 501(c)(3) of the
4 Internal Revenue Code of 1986, as amended."

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun, before its effective date.

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on July 1, 2009.

11

INTRODUCED BY: *Trizanne Chun Alaliland*



Report Title:

Eminent Domain; Charitable Organizations

Description:

Prohibits use of power of eminent domain to take and transfer property owned by a charitable organization to a private entity for development purposes or other private use.

