

TESTIMONY

SB581

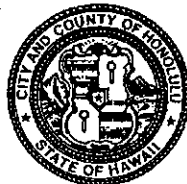
LATE

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
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LATE TESTIMONY

MUFI HANNEMANN
MAYOR



DAVID K. TANOUE
ACTING DIRECTOR

ROBERT M. SUMITOMO
DEPUTY DIRECTOR

February 18, 2009

The Honorable Clayton Hee, Chair
and Members on the Committee on Water,
Land, Agriculture and Hawaiian Affairs
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

**Subject: Senate Bill 581
Relating to Eminent Domain**

The Department of Planning and Permitting **opposes** Senate Bill 581.

It would set parameters on the counties' ability to condemn land by specifically prohibiting its use on properties owned by tax-exempt charitable organizations for economic development purposes.

As noted in the first section of this bill, it is in response to the 2005 decision by the U.S. Supreme Court case, *Kelo vs. City of New London*. In this case, the taking of private land for economic development purposes based on a comprehensive redevelopment plan adopted by the city, was upheld. Clearly, the constitutional requirement of public use was established for the court to uphold the condemnation. We agree with this decision. In determining whether to condemn land for infrastructure improvements or neighborhood revitalization, the city has a deliberate decision-making process to show a public use or benefit. The determination to condemn land should not be stifled by who owns the land, but on the larger concerns of public health, safety and welfare for the neighborhood, the region, or the county. A project to provide more jobs, renewed commercial investments, and community amenities which can be of vital interest to a declining neighborhood should not be thwarted by a happenstance of ownership. Please note that any landowner must be paid the fair market value of the lands taken by condemnation.

We do not know of any pending plans for the city to condemn lands owned by charitable organizations for economic development. Should this occur, the decision will not be made lightly. Like what the City has done in the past with various urban renewal projects, sometimes condemnation must occur to accomplish overarching neighborhood revitalization goals.

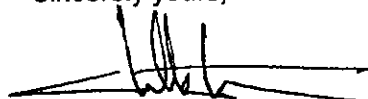
LATE TESTIMONY

The Honorable Clayton Hee, Chair
and Members of the Committee on Water,
Land, Agriculture and Hawaiian Affairs
State Senate
Re: Senate Bill 581
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Please file this bill.

Thank you for the opportunity to testify.

Sincerely yours,



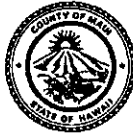
David K. Tanoue, Acting Director
Department of Planning and Permitting

DKT: jmf
Sb581-kst.doc

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Danny A. Mateo

Vice-Chair
Michael J. Molina

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Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

LATE TESTIMONY

February 17, 2009

TO: Honorable Clayton Hee, Chair
Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

FROM: Danny A. Mateo
Council Chair

SUBJECT: **HEARING OF FEBRUARY 18, 2009; TESTIMONY IN OPPOSITION TO SB 581,
RELATING TO EMINENT DOMAIN**

Thank you for the opportunity to testify in opposition to this important measure. The purpose of this measure is to prohibit the use of the power of eminent domain to take and transfer private property to a private entity that had expressed interest in purchasing the same property for development purposes or other private use.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I oppose this measure for the following reasons:

1. As the law currently stands, the power of eminent domain can legitimately be exercised by a county (or State, for that matter) only where the taking is for a public purpose. In Kelo v. City of New London, 545 U.S. 469 (2005), the United States Supreme Court confirmed that promoting economic development can constitute a public purpose, noting, "Promoting economic development is a traditional and long-accepted function of government." Indeed, the Court went on to cite Hawaii Housing Authority v. Midkiff, 467 U.S. 229 -- in which fee title was taken, by statute, from lessors and transferred to lessees for just compensation in order to reduce the concentration of land ownership -- as precedent. Particularly in these economically challenging times, a county should not be hampered in its ability to use such means as are necessary to promote economic development and redevelopment.

LATE TESTIMONY

To Honorable Clayton Hee
February 17, 2009
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2. The impetus for the measure, as expressed in the language of the bill, is:
growing concern that the need for urban renewal or economic development may be cited as justification for allowing government to condemn private property and transfer the property to the benefit of another private person or entity. In many cases the receiving private entity had expressed an earlier interest in the condemned property for development or other private use.

However, the measure is an unnecessary limitation on the counties' ability to determine the public purpose underlying the exercise of its eminent domain power. As the Court acknowledged in Midkiff, "[a] purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void." In other words, if a county condemns private property and transfers it to a private entity for a purely private use, the condemnation could not withstand legal scrutiny. It is not necessary to second-guess a county's determination of what is in the public interest in the way this measure does. It is the county that is in the best position to determine what is in the public's interest and what public purpose a condemnation will serve.

For the foregoing reasons, I oppose this measure.

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KAMEHAMEHA SCHOOLS

February 18, 2009

TESTIMONY TO THE SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS

By
Paul Quintiliani, Director
Endowment/Commercial Assets Division
Kamehameha Schools

To: Senator Clayton Hee, Chair
Senator Jill Tokuda, Vice Chair
Members of the Committee

RE: SB 581 Relating to Eminent Domain

Kamehameha Schools submits the following comments in support of SB 581 (the "*Bill*"):

This Bill seeks to prohibit use of power of eminent domain to take and transfer private property to a private entity that expressed interest in purchasing the same property for development purposes or other private use.

In response to the governmental taking of property for private economic development in Kelo v. City of New London, 545 U.S. 469, 125 S.Ct. 2655, 162 L.Ed. 2d 439 (2005), many states have enacted legislation restricting the use of condemnation proceedings to protect the property rights of private landowners. Hawaii has yet to adopt legislation to protect these property rights. This Bill is a first step in preventing these unfair and unreasonable governmental takings of private property.

Kamehameha Schools has seen the loss of many of its assets through condemnation. While supporters of such condemnations argue they should be upheld so long as the landowner is paid "just compensation," landowners, both large and small know from experience that forced taking of their lands almost never results in a fair economic result for the landowner. Further, it does not compensate landowners for the emotional loss of inherited lands that have been theirs for generations.

As a Native Hawaiian educational organization and as the steward of lands held in legacy for over a hundred years, Kamehameha Schools has a deep spiritual and cultural connection to its lands and has vigorously and consistently through the years defended against the forced takings of its lands, including lease-to-fee condemnations. While Kamehameha Schools has cooperated when a governmental authority has sought to acquire property for legitimate and justifiable public uses and benefits, such as roadways and utilities, we do not believe it is ever legitimate or justified for a governmental authority to take our lands for the economic and private purposes set forth in this Bill.

Thank you for this opportunity to express our support of this Bill.

LATE TESTIMONY

February 17, 2009

The Honorable Clayton Hee, Chair
Senate Committee on Water, Land,
Agriculture, and Hawaiian Affairs
State Capitol, Room 229
Honolulu, Hawaii 96813

LATE TESTIMONY

RE: S.B. 581 Relating to Eminent Domain

HEARING DATE: Wednesday, February 18, 2009 at 3:30 p.m.

Aloha Chair Hee, Vice Chair Tokuda and Members of the Committee:

I am Myoung Oh, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR") and its 9,600 members in Hawai'i. HAR **supports the intent** of S.B. 581, which prohibits use of the power of eminent domain to take and transfer private property to a private entity that had expressed interest in purchasing the same property for development purposes or other private use.

HAR supports the protection of private property rights by imposing reasonable restrictions on the exercise of the power of eminent domain and, for this reason, supports the intent of S.B. 581. HAR is also generally supportive of the exceptions to the rule which allow takings for public utilities, irrigation systems, affordable and community developments, and the development of condemnation tracts. HAR does note, however, that there may be some ambiguities with the bill as drafted, particularly with regard to how it would be determined that an entity "expressed an interest" in the property. Moreover, it would seem that the measure would not entirely prohibit the practice of condemning private property to sell to another private party – rather, it would only restrict those private parties that may have previously made the mistake of expressing their intent to purchase the property.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

LATE TESTIMONY

From: Linda Kahana
Sent: Wednesday, February 18, 2009 8:50 AM
To: WTLTestimony
Subject: FW: In strong support of SB 581 - RELATING TO EMINENT DOMAIN

From: ManyaVogrg@aol.com [mailto:ManyaVogrg@aol.com]
Sent: Tuesday, February 17, 2009 11:18 PM
To: testimony
Subject: In strong support of SB 581 - RELATING TO EMINENT DOMAIN

COMMITTEE ON WATER, LAND, AGRICULTURE & HAWAIIAN AFFAIRS
Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice Chair

Wednesday, February 18th, 2009
3:30pm Conference Room 229
Email WTLTestimony@Capitol.hawaii.gov

Re: SB 581 - RELATING TO EMINENT DOMAIN Prohibits use of power of eminent domain to take and transfer private property to a private entity that had expressed interest in purchasing the same property for development purposes or other private use. WTL, JGO

Honorable Chairs and Members of the Committee:

Our names are Manya Vogrig and Phyllis Zerbe, and we are testifying on behalf of ourselves and the members of our organizations (the Small Landowners Association of Hawaii and the Small Landowners of Oahu). We are small landowner families of the Hawaiian Islands who own land under multi-family condominium and co-operative apartment buildings. We strongly support this legislation which could help to protect our families.

In 2005 the City Council repealed their own law, Chapter 38 which had allowed the condemnation of multi-family private property for the private benefit of others. This proposed legislation SB 581 is of utmost importance to us as it will officially prohibit the wrongful use of Eminent Domain and prevent it from being used against us again for private purposes and gains.

Thank you very much!

Manya Vogrig T. Phyllis Zerbe
2877 Kalakaua Ave. #1205 1434 Punahou St.
Honolulu, HI 96815 Honolulu, HI 96822
Phone: 922-6934 Phone: 949-9998

For: Small Landowners Association of Hawaii
(Small Landowners who own land under Condominiums)

TESTIMONY

SB581

LATE

(END)