
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,
2 125 S.Ct. 2655, 162 L.Ed. 2d 439 (2005), the United States
3 Supreme Court narrowly held in a five to four decision that a
4 city could exercise its eminent domain power by transferring
5 property from one private party to another to promote economic
6 development. However, the United States Supreme Court
7 emphasized that nothing in its opinion precluded any state from
8 placing stricter restrictions on eminent domain power and noted
9 that many states had already imposed standards stricter than the
10 federal standard.

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



1 it to others for economic development or redevelopment or for
2 private use or development, and that this legislation is
3 required to safeguard the rights of private property owners from
4 these types of takings of their property.

5 The legislature further finds that property owned by
6 nonprofit charitable organizations serve the public good,
7 provide community service, and pursue missions that are worthy
8 of protection. Because of their charitable nature, the
9 legislature finds that taking property through eminent domain
10 from nonprofits for commercial, residential, or agricultural use
11 is disingenuous and requires protection.

12 The purpose of this Act is to limit the power of eminent
13 domain over property owned by tax exempt charitable
14 organizations.

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

17 **"§46-1.5 General powers and limitation of the counties.**

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

21 (1) Each county shall have the power to frame and adopt a
22 charter for its own self-government that shall



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

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

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

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



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



1 endanger the health or safety of the occupants
2 thereof, as required by the Federal Flood
3 Insurance Act of 1956 (chapter 1025, Public Law
4 1016);

5 (6) Each county shall have the power to exercise the power
6 of condemnation by eminent domain in accordance with
7 section 46-61 when it is in the public interest to do
8 so; provided that, notwithstanding any law to the
9 contrary, no county shall exercise this power over any
10 property owned, in whole or in part, by a tax-exempt
11 charitable organization as defined by section
12 501(c) (3) of the Internal Revenue Code of 1986, as
13 amended, and subsequently transfer, by sale or
14 otherwise, ownership, possession, or use to any entity
15 or person for any economic development, redevelopment,
16 or private use, including but not limited to
17 industrial, residential, agricultural, commercial,
18 hotel, resort, office, or retail use or development;

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



- 1 (8) Each county shall have the power to fix the fees and
2 charges for all official services not otherwise
3 provided for;
- 4 (9) Each county shall have the power to provide by
5 ordinance assessments for the improvement or
6 maintenance of districts within the county;
- 7 (10) Except as otherwise provided, no county shall have the
8 power to give or loan credit to, or in aid of, any
9 person or corporation, directly or indirectly, except
10 for a public purpose;
- 11 (11) Where not within the jurisdiction of the public
12 utilities commission, each county shall have the power
13 to regulate by ordinance the operation of motor
14 vehicle common carriers transporting passengers within
15 the county and adopt and amend rules the county deems
16 necessary for the public convenience and necessity;
- 17 (12) Each county shall have the power to enact and enforce
18 ordinances necessary to prevent or summarily remove
19 public nuisances and to compel the clearing or removal
20 of any public nuisance, refuse, and uncultivated
21 undergrowth from streets, sidewalks, public places,
22 and unoccupied lots. In connection with these powers,



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

14 (13) Each county shall have the power to enact ordinances
15 deemed necessary to protect health, life, and
16 property, and to preserve the order and security of
17 the county and its inhabitants on any subject or
18 matter not inconsistent with, or tending to defeat,
19 the intent of any state statute where the statute does
20 not disclose an express or implied intent that the
21 statute shall be exclusive or uniform throughout the
22 State;



- 1 (14) Each county shall have the power to:
- 2 (A) Make and enforce within the limits of the county
- 3 all necessary ordinances covering all:
- 4 (i) Local police matters;
- 5 (ii) Matters of sanitation;
- 6 (iii) Matters of inspection of buildings;
- 7 (iv) Matters of condemnation of unsafe
- 8 structures, plumbing, sewers, dairies, milk,
- 9 fish, and morgues; and
- 10 (v) Matters of the collection and disposition of
- 11 rubbish and garbage;
- 12 (B) Provide exemptions for homeless facilities and
- 13 any other program for the homeless authorized by
- 14 chapter 356D, for all matters under this
- 15 paragraph;
- 16 (C) Appoint county physicians and sanitary and other
- 17 inspectors as necessary to carry into effect
- 18 ordinances made under this paragraph, who shall
- 19 have the same power as given by law to agents of
- 20 the department of health, subject only to
- 21 limitations placed on them by the terms and
- 22 conditions of their appointments; and



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

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

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

16 (A) Any property held for school purposes may not be
17 disposed of without the consent of the
18 superintendent of education;

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



1 (C) All proceeds from the sale of park lands shall be
2 expended only for the acquisition of property for
3 park or recreational purposes;

4 (17) Each county shall have the power to provide by charter
5 for the prosecution of all offenses and to prosecute
6 for offenses against the laws of the State under the
7 authority of the attorney general of the State;

8 (18) Each county shall have the power to make
9 appropriations in amounts deemed appropriate from any
10 moneys in the treasury, for the purpose of:

11 (A) Community promotion and public celebrations;

12 (B) The entertainment of distinguished persons as may
13 from time to time visit the county;

14 (C) The entertainment of other distinguished persons,
15 as well as, public officials when deemed to be in
16 the best interest of the community; and

17 (D) The rendering of civic tribute to individuals
18 who, by virtue of their accomplishments and
19 community service, merit civic commendations,
20 recognition, or remembrance;

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



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

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

5

INTRODUCED BY:

JAN 28 2009



Report Title:

Eminent Domain; Nonprofit Organizations

Description:

Limits county eminent domain powers to preclude condemnation of private property owned by tax exempt charitable organizations for use for certain economic development related purposes.

