

JAN 23 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 the wake of the recent United States Supreme  
2 Court decision in *Kelo v. City of New London*, 125 S.Ct. 2655  
3 (2005), there has been a growing concern that the need for urban  
4 renewal or economic development may be cited as justification  
5 for allowing government to condemn private property and transfer  
6 the property to the benefit of another private person or  
7 entity. In many cases the receiving private entity had  
8 expressed an earlier interest in the condemned property for  
9 development or other private use.

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

12           "§46-1.5 General powers and limitation of the counties.  
13 Subject to general law, each county shall have the following  
14 powers and shall be subject to the following liabilities and  
15 limitations:

16           (1) Each county shall have the power to frame and adopt a  
17 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 no county shall condemn and transfer  
9       private property to a private entity that had  
10       expressed an interest in purchasing the property for  
11       development or commercial purposes or private use,  
12       except in takings for public utilities, irrigation  
13       systems, and affordable housing and community  
14       developments, and the condemnation of development  
15       tracts;

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

19       (8) Each county shall have the power to fix the fees and  
20       charges for all official services not otherwise  
21       provided for;



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



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

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

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

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



- 1 (i) Local police matters;
- 2 (ii) Matters of sanitation;
- 3 (iii) Matters of inspection of buildings;
- 4 (iv) Matters of condemnation of unsafe
- 5 structures, plumbing, sewers, dairies, milk,
- 6 fish, and morgues; and
- 7 (v) Matters of the collection and disposition of
- 8 rubbish and garbage;
- 9 (B) Provide exemptions for homeless facilities and
- 10 any other program for the homeless authorized by
- 11 chapter 201H or 356D, for all matters under this
- 12 paragraph;
- 13 (C) Appoint county physicians and sanitary and other
- 14 inspectors as necessary to carry into effect
- 15 ordinances made under this paragraph, who shall
- 16 have the same power as given by law to agents of
- 17 the department of health, subject only to
- 18 limitations placed on them by the terms and
- 19 conditions of their appointments; and
- 20 (D) Fix a penalty for the violation of any ordinance,
- 21 which penalty may be a misdemeanor, petty



1                   misdemeanor, or violation as defined by general  
2                   law;

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

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

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

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

19           (C) All proceeds from the sale of park lands shall be  
20           expended only for the acquisition of property for  
21           park or recreational purposes;





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

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

8                   (A) Community promotion and public celebrations;

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

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

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

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

19                   (A) Construct, purchase, take on lease, lease,  
20                   sublease, or in any other manner acquire, manage,  
21                   maintain, or dispose of buildings for county  
22                   purposes, sewers, sewer systems, pumping



1 stations, waterworks, including reservoirs,  
2 wells, pipelines, and other conduits for  
3 distributing water to the public, lighting  
4 plants, and apparatus and appliances for lighting  
5 streets and public buildings, and manage,  
6 regulate, and control the same;

7 (B) Regulate and control the location and quality of  
8 all appliances necessary to the furnishing of  
9 water, heat, light, power, telephone, and  
10 telecommunications service to the county;

11 (C) Acquire, regulate, and control any and all  
12 appliances for the sprinkling and cleaning of the  
13 streets and the public ways, and for flushing the  
14 sewers; and

15 (D) Open, close, construct, or maintain county  
16 highways or charge toll on county highways;  
17 provided that all revenues received from a toll  
18 charge shall be used for the construction or  
19 maintenance of county highways;

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



- 1           (21) Unless otherwise provided by law, each county shall  
2           have the power to establish by ordinance the order of  
3           succession of county officials in the event of a  
4           military or civil disaster;
- 5           (22) Each county shall have the power to sue and be sued in  
6           its corporate name;
- 7           (23) Each county shall have the power to establish and  
8           maintain waterworks and sewer works; to collect rates  
9           for water supplied to consumers and for the use of  
10          sewers; to install water meters whenever deemed  
11          expedient; provided that owners of premises having  
12          vested water rights under existing laws appurtenant to  
13          the premises shall not be charged for the installation  
14          or use of the water meters on the premises; to take  
15          over from the State existing waterworks systems,  
16          including water rights, pipelines, and other  
17          appurtenances belonging thereto, and sewer systems,  
18          and to enlarge, develop, and improve the same;
- 19          (24) (A) Each county may impose civil fines, in addition  
20               to criminal penalties, for any violation of  
21               county ordinances or rules after reasonable  
22               notice and requests to correct or cease the



1 violation have been made upon the violator. Any  
2 administratively imposed civil fine shall not be  
3 collected until after an opportunity for a  
4 hearing under chapter 91. Any appeal shall be  
5 filed within thirty days from the date of the  
6 final written decision. These proceedings shall  
7 not be a prerequisite for any civil fine or  
8 injunctive relief ordered by the circuit court;

9 (B) Each county by ordinance may provide for the  
10 addition of any unpaid civil fines, ordered by  
11 any court of competent jurisdiction, to any  
12 taxes, fees, or charges, with the exception of  
13 fees or charges for water for residential use and  
14 sewer charges, collected by the county. Each  
15 county by ordinance may also provide for the  
16 addition of any unpaid administratively imposed  
17 civil fines, which remain due after all judicial  
18 review rights under section 91-14 are exhausted,  
19 to any taxes, fees, or charges, with the  
20 exception of water for residential use and sewer  
21 charges, collected by the county. The ordinance  
22 shall specify the administrative procedures for



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



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



1 collection of unpaid civil fines authorized in  
2 this paragraph shall be in addition to any other  
3 procedures for collection available to the State  
4 and county by law or rules of the courts;

5 (C) Each county may impose civil fines upon any  
6 person who places graffiti on any real or  
7 personal property owned, managed, or maintained  
8 by the county. The fine may be up to \$1,000 or  
9 may be equal to the actual cost of having the  
10 damaged property repaired or replaced. The  
11 parent or guardian having custody of a minor who  
12 places graffiti on any real or personal property  
13 owned, managed, or maintained by the county shall  
14 be jointly and severally liable with the minor  
15 for any civil fines imposed hereunder. Any such  
16 fine may be administratively imposed after an  
17 opportunity for a hearing under chapter 91, but  
18 such a proceeding shall not be a prerequisite for  
19 any civil fine ordered by any court. As used in  
20 this subparagraph, "graffiti" means any  
21 unauthorized drawing, inscription, figure, or



1 mark of any type intentionally created by paint,  
2 ink, chalk, dye, or similar substances;

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

13 (i) The nature and egregiousness of the  
14 violation;

15 (ii) The duration of the violation;

16 (iii) The number of recurring and other similar  
17 violations;

18 (iv) Any effort taken by the violator to correct  
19 the violation;

20 (v) The degree of involvement in causing or  
21 continuing the violation;





1 (vi) Reasons for any delay in the completion of  
2 the appeal; and

3 (vii) Other extenuating circumstances.

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

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



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

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

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

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

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



1           "§101-2 Taking private property for public use; disposal  
2 of excess property. Private property may be taken for public  
3 use[-]; provided that public use shall not include the  
4 condemning or transferring of private property to a private  
5 entity that expresses an interest in purchasing the property for  
6 development or commercial purposes or private use, except in  
7 takings for public utilities, irrigation systems, and affordable  
8 housing and community developments, and the condemnation of  
9 development tracts. Private property may also be taken by the  
10 State or any county in excess of that needed for [such] the  
11 public use in cases where small remnants would otherwise be left  
12 or where other justifiable cause necessitates [such] the taking  
13 to protect and preserve the contemplated improvement, or public  
14 policy demands [such] the taking in connection with the  
15 improvement, in which case the condemning authority may sell or  
16 lease [such] the excess property, with [such] the restrictions  
17 as may be dictated by considerations of public policy in order  
18 to protect and preserve [such] the improvements; provided that  
19 in the disposal of [~~any such~~] the excess property, if [such] the  
20 property is less than the minimum lot size requirements of the  
21 applicable zoning regulations, is of a configuration or  
22 topography which in the judgment of the appropriate county



1 zoning authority cannot be put to a reasonable use in accordance  
2 with the applicable zoning regulations, or lacks proper access  
3 to a street, it shall be offered to the owner or owners of the  
4 abutting land for a reasonable price based on an appraisal;  
5 provided further that if [~~sueh~~] the excess property conforms to  
6 [~~said~~] the minimum lot size requirements, is of a configuration  
7 and topography which in the judgment of the appropriate county  
8 zoning authority can be put to a reasonable use in accordance  
9 with the applicable zoning regulations, and has proper access to  
10 a street, then the State or the county, as the case may be, may  
11 sell [~~sueh~~] the property at public auction. If there is more  
12 than one abutting owner who is interested in purchasing [~~any~~  
13 ~~sueh~~] the excess property which is less than the minimum lot  
14 size requirements of the applicable zoning regulations, is of a  
15 configuration or topography which in the judgment of the  
16 appropriate county zoning authority cannot be put to a  
17 reasonable use in accordance with applicable zoning regulations,  
18 or lacks proper access to a street, it shall be sold by the  
19 condemning authority by sealed bid to the abutting owner  
20 submitting the highest offer above the appraised value; provided  
21 further that if [~~any-sueh~~] the excess property abuts more than  
22 one parcel, the condemning authority may make application for



1 subdividing [such] the property so that a portion thereof may be  
 2 sold to each abutting owner at the appraised value if the public  
 3 interest is best served by [such] the subdivision and disposal.  
 4 All moneys received from the sale or lease of [such] the excess  
 5 property shall be paid into the fund or appropriation from which  
 6 money was taken for the original condemnation and shall be  
 7 available for the purposes of [such] the fund or appropriation."

8 SECTION 4. Statutory material to be repealed is bracketed  
 9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect on July 1, 2009.

11

INTRODUCED BY: F. Kalani Egboh

Norman Sakamoto  
 Michelle N. ~~Hedrick~~  
 J. L. H.  
 Robert Brown  
 Anne Mercedes K.  
 Carol Fukushima  
 Ronny de Paul  
 R. Bruce Kohler  
 Jim  
 Clarence F. Fishburn  
 Mike Hubbard  
 [Signature]  
 [Signature]



**Report Title:**  
Eminent Domain

**Description:**  
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.

