

JAN 21 2011

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# 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 is 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           The purpose of this Act is to clarify the circumstances  
11 under which a county may exercise eminent domain powers to  
12 transfer private property to a private entity.

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

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



- 1           (1) Each county shall have the power to frame and adopt a  
2           charter for its own self-government that shall  
3           establish the county executive, administrative, and  
4           legislative structure and organization, including but  
5           not limited to the method of appointment or election  
6           of officials, their duties, responsibilities, and  
7           compensation, and the terms of their office;
- 8           (2) Each county shall have the power to provide for and  
9           regulate the marking and lighting of all buildings and  
10          other structures that may be obstructions or hazards  
11          to aerial navigation, so far as may be necessary or  
12          proper for the protection and safeguarding of life,  
13          health, and property;
- 14          (3) Each county shall have the power to enforce all claims  
15          on behalf of the county and approve all lawful claims  
16          against the county, but shall be prohibited from  
17          entering into, granting, or making in any manner any  
18          contract, authorization, allowance payment, or  
19          liability contrary to the provisions of any county  
20          charter or general law;
- 21          (4) Each county shall have the power to make contracts and  
22          to do all things necessary and proper to carry into

1 execution all powers vested in the county or any  
2 county officer;

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

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

7 (B) Remove from the channels, and from the shores and  
8 beaches, any debris that is likely to create an  
9 unsanitary condition or become a public nuisance;  
10 provided that, to the extent any of the foregoing  
11 work is a private responsibility, the  
12 responsibility may be enforced by the county in  
13 lieu of the work being done at public expense;

14 (C) Construct, acquire by gift, purchase, or by the  
15 exercise of eminent domain, reconstruct, improve,  
16 better, extend, and maintain projects or  
17 undertakings for the control of and protection  
18 against floods and flood waters, including the  
19 power to drain and rehabilitate lands already  
20 flooded; and

21 (D) Enact zoning ordinances providing that lands  
22 deemed subject to seasonable, periodic, or



1 occasional flooding shall not be used for  
2 residence or other purposes in a manner as to  
3 endanger the health or safety of the occupants  
4 thereof, as required by the Federal Flood  
5 Insurance Act of 1956 (chapter 1025, Public Law  
6 1016);

7 (6) Each county shall have the power to exercise the power  
8 of condemnation by eminent domain in accordance with  
9 section 46-61 when it is in the public interest to do  
10 so; provided that no county shall condemn and transfer  
11 private property to a private entity that had  
12 expressed an interest in purchasing the property for  
13 development or commercial purposes or private use,  
14 except in takings for public utilities, irrigation  
15 systems, and affordable housing and community  
16 developments, and the condemnation of development  
17 tracts;

18 (7) Each county shall have the power to exercise  
19 regulatory powers over business activity as are  
20 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                           part XVII of chapter 346[7] or chapter 201H, for
- 15                           all matters under this 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, by executive order, may exempt donors, provider  
12 agencies, homeless facilities, and any other program  
13 for the homeless under part XVII of chapter 346 from  
14 real property taxes, water and sewer development fees,  
15 rates collected for water supplied to consumers and  
16 for use of sewers, and any other county taxes,  
17 charges, or fees; provided that any county may enact  
18 ordinances to regulate and grant the exemptions  
19 granted by this 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. Section 101-2, Hawaii Revised Statutes, is  
4 amended to read as follows:

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



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



1 condemning authority by sealed bid to the abutting owner  
 2 submitting the highest offer above the appraised value; provided  
 3 further that if any [~~such~~] of the excess property abuts more  
 4 than one parcel, the condemning authority may make application  
 5 for subdividing [~~such~~] the property so that a portion thereof  
 6 may be sold to each abutting owner at the appraised value if the  
 7 public interest is best served by [~~such~~] the subdivision and  
 8 disposal. All moneys received from the sale or lease of [~~such~~]  
 9 the excess property shall be paid into the fund or appropriation  
 10 from which money was taken for the original condemnation and  
 11 shall be available for the purposes of [~~such~~] the fund or  
 12 appropriation."

13 SECTION 4. This Act does not affect rights and duties that  
 14 matured, penalties that were incurred, and proceedings that were  
 15 begun before its effective date.

16 SECTION 5. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect on July 1, 2011.

19 ~~INTRODUCED BY:~~  
 Michelle Adams  
 Malame John

INTRODUCED BY:

A. Kalam Eghsh  
 Don Lee  
 Rosalinda  
 Suzanne Chyn Adland  
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**Report Title:**

Eminent Domain; Takings

**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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

