

SB 1147

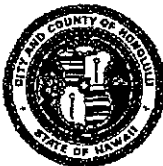
RELATING TO COUNTIES.

Restricts the eminent domain powers of the counties to ensure that private property, if acquired by a county through its eminent domain powers, is acquired only for public uses and not for private use.

**OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE
MAYOR



DOUGLAS S. CHIN
ACTING MANAGING DIRECTOR

February 11, 2011

The Honorable Will Espero, Chair,
and Members
Committee on Public Safety, Government
Operations, and Military Affairs
The Senate of the State of Hawaii
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Espero and Members:

Re: Opposition to Senate Bill No. 1147, Relating to Counties

The City and County of Honolulu ("City") opposes Senate Bill No. 1147. The bill is set for hearing on February 12, 2011, at 10:00 a.m. in Conference Room 229.

The bill proposes to amend Section 46-1.5(6) of the Hawaii Revised Statutes ("HRS") by adding thereto language stating, "in accordance with section 46-61," to amend HRS Section 46-61 by deleting the existing language stating, "and other public uses within the purview of section 101-2," and substituting in lieu thereof, language stating, "for residential leasehold condemnation purposes similar to those set forth in chapter 516 or for urban renewal purposes under section 53-8," and to amend HRS Section 101-2 by adding thereto a sentence stating, "The counties may exercise the power of eminent domain to take private property only for those public purposes set forth in section 46-61." Section 46-1.5(6) provides that the City has the power to exercise its power of eminent domain when it is in the public interest. Section 46-61 enumerates some of the public uses for which the City can exercise its power of eminent domain. Section 101-2 provides that the City can take private property for public use.

The digest of the proposed bill indicates that the bill is to restrict the eminent domain power of the counties so that if private property is acquired, it is acquired for public use only and not for private use. In the City's view, the existing statutory language in Sections 46-1.5(6),

The Honorable Will Espero, Chair,
and Members
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Operations, and Military Affairs
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46-61, and 101-2 clearly provide that private property is to be condemned for public use only. The proposed bill would unnecessarily restrict the exercise of the City's power of eminent domain to only those public uses enumerated in Section 46-61. In the City's view, the existing language in Section 46-61 is better because it allows for the condemnation of property which is for a public use that is not specifically provided in the section.

Moreover, if passed, the bill may preclude the City's use of the power of eminent domain to acquire real property along its mass transit route. This is because the words "mass transit" or similar wording would not be specifically listed as a public use in Section 46-61, and the existing language allowing "other public uses" would be deleted. Similarly, the bill may foreclose the City from condemning property for a new landfill to replace or supplement the City's existing Waimanalo Gulch Sanitary Landfill and for property required for preparing refuse for shipping out of Hawaii because the words "landfill and other refuse facilities" would not be specifically listed as a public use in the section and the existing wording, "other public uses", would be deleted. Further, with the deletion of the existing words, "other public uses", the bill may preclude the City from condemning property for purposes such as, "protection of watershed land" and "preservation of historic or culturally important property", for which purposes the voters of Honolulu approved by voting for the adoption of an amendment to the City's Revised Charter in 2006.

In conclusion, we believe that Senate Bill No. 1147 is unnecessary because the existing language in Sections 46-1.5(6), 46-61, and 101-2 already provide that private property is to be condemned for public use only. The proposed bill also unnecessarily restricts the City's power of condemnation and may preclude the City's ability to condemn property for mass transit, landfill and other refuse facilities, protection of watershed land, and preservation of historic or culturally important property purposes.

Thank you for the opportunity to present this testimony.

Very truly yours,

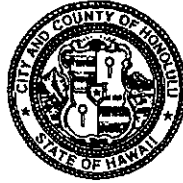


Douglas S. Chin
Managing Director
City and County of Honolulu

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



DAVID K. TANOUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

February 12, 2011

The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Government Operations, and Military Affairs
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Espero and Members:

**Subject: Senate Bill No. 1147
Related to Eminent Domain**

The Department of Planning and Permitting **opposes** Senate Bill No. 1147, which would restrict the counties' ability to exercise eminent domain power only to those specific purposes listed under Section 46-61, HRS.

Existing provisions of Chapter 46 and 101, HRS, and other state statutes provide enough guidance on the counties' ability to condemn land. We believe that the current open and deliberate process which the City and County of Honolulu uses is sufficient to decide when condemnation is appropriate to respond to a county public interest. This process includes public input and formal city council approval by resolution.

Section 2 of this bill would add two new purposes for the use of eminent domain: residential leasehold condemnation; and urban renewal. We are not opposed to these additions as they are redundant with other state statutes.

We are concerned that restricting the use of eminent domain to an itemized list of purposes is bound to omit valid activities. For example, while flood control is on the list, rock-fall protection is not. Similarly, it appears that the counties could not use eminent domain for community development or neighborhood revitalization purposes.

To allay concerns, the Legislature could re-emphasize that eminent domain can only be used to fulfill a legitimate and specific public purpose.

The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Government Operations, and Military Affairs
State Senate
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Please defer Senate Bill No. 1147. Thank you for the opportunity to testify.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Tanoue", with a horizontal line drawn through it.

David K. Tanoue, Director
Department of Planning and Permitting

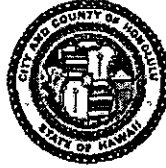
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DEPARTMENT OF TRANSPORTATION SERVICES
CITY AND COUNTY OF HONOLULU

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WAYNE Y. YOSHIOKA
ACTING DIRECTOR

KAI NANI KRAUT, P.E.
DEPUTY DIRECTOR

KENNETH TORU HAMAYASU, P.E.
DEPUTY DIRECTOR

February 11, 2011

RT2/11-403495

VIA EMAIL: PGMTestimony@Capitol.hawaii.gov

The Honorable Will Espero, Chair
and Members of the Senate Committee on Public
Safety, Government Operations, and Military Affairs
State Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chair Espero and Senators:

Subject: SB 1147 Relating to Counties
Committee on Public Safety, Government Operations,
and Military Affairs
Saturday, February 12, 2011 at 10:00 am

The Department of Transportation Services ("Department") **opposes** Senate Bill No. 1147 in its current form. The bill restricts the eminent domain powers of the counties to a finite, enumerated list of public uses and removes the language that now allows counties to condemn private property for other public uses. The bill also seems to resurrect residential leasehold condemnation; however, the Department takes no position on that issue.

Public transportation is not amongst the enumerated public uses, and if passed, this bill could potentially kill the Honolulu High-Capacity Transit Corridor Project ("Project"). The Project is a 20-mile, 21-station rail project that is supported by the Mayor, the Governor, the City Council, a majority of the community, the United States Federal Transit Administration ("FTA"), and members of this Legislature and our Congressional delegation. The Project has finally progressed to the point that we are scheduled for groundbreaking in two weeks. If enacted, this bill may stop the Project, because "mass transit systems" or even "public transportation" more broadly is not one of the enumerated public uses in the current draft bill. As disclosed in the Project's Final Environmental Impact Statement that has been approved by the FTA, and accepted by the Governor, the Project will need to acquire private property, primarily by negotiation; in some cases, however, condemnation may be necessary.

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and Members of the Senate Committee on
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Military Affairs

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The bill also conflicts with the counties' authority to condemn property for a mass transit system (including rail) under Hawaii Revised Statutes § 51-1.

For these reasons, we respectfully ask that your committee defer Senate Bill No. 1147.

Thank you for the opportunity to provide our testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Hamayasu", written in a cursive style.

Kenneth T. Hamayasu
Deputy Director

Attachment

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Balsa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White



Director of Council Services
Ken Fukuoka

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

February 10, 2011

TO: Honorable Will Espero, Chair
Senate Committee on Public Safety, Government Operations, and Military Affairs

FROM: Robert Carroll
Council Member, East Maui *Robert Carroll*

DATE: Saturday, February 12, 2011

SUBJECT: **OPPOSITION OF SB 1147, RELATING TO COUNTIES**

Thank you for the opportunity to testify in opposition to this important measure. The purpose of this measure is to restrict the eminent domain powers of the counties to ensure that private property, if acquired by a county through its eminent domain powers, is acquired only for public uses and not for 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. During the recent economic down turn, all levels of government have suffered a significant loss of revenue, from real property tax, to general excise tax, to transient accommodation tax, accordingly local governments must seek a variety of new methods for generating revenue.
2. Even though eminent domain has not been used as a tool to generate new forms of revenue, this authority should be maintain within the jurisdiction of the local governments. The discretion to use eminent domain to benefit our communities should be maintain at the county level.
3. Counties throughout the State of Hawaii should have the discretion to enact far reaching and more restrictive legislation to protect their respective environs. Thus SB 1147 seeks to usurp county authority and repudiates home rule principles. Eminent domain policies are likely to have substantial impacts on local economic, social, and environmental conditions. Therefore, local government should retain authority on decisions about eminent domain policies to the greatest possible extent.

For the foregoing reasons, I oppose this measure.



KAMEHAMEHA SCHOOLS

February 11, 2011

WRITTEN TESTIMONY TO THE
SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS,
AND MILITARY AFFAIRS

By

Sydney Keli'ipuleole, Director
Endowment/Residential and Agriculture Operations

Hearing Date: Saturday, February 12, 2011
10:00 a.m., Conference Room 229

To: Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair
Members of the Committee

RE: Senate Bill No. 1147 Relating to Counties

Kamehameha Schools respectfully opposes S.B. No. 1147 (this "**Bill**") as written.

While we agree with the general purpose of this Bill (i.e., to restrict the counties' eminent domain powers to public uses, not private uses) and the elimination of the counties' power to broadly take property for "other public purposes" under HRS §101-2," we oppose the addition of the following language to HRS §46-61 (see Lines 19 and 20 on page 18 of this Bill):

"for residential leasehold condemnation purposes similar to those set forth in chapter 516"

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This language purports to give the counties the power to condemn for purposes similar to HRS §516, which allows the State to take land from one owner and give it to another.

February 11, 2011

Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair
Members of the Committee

This is contrary to this Bill's very purpose, which is to limit condemnations to public uses, not private uses, and could result in consequences that were neither intended nor expected by this Bill.

In addition, this language perpetuates a policy that Kamehameha Schools has long opposed and will continue to oppose: the forcible taking of its lands and legacy for the benefit of private parties. While we recognize that chapter 516 provides for residential leasehold condemnation, we can see no reason to promote it further in chapter 46.

Therefore, we request that the language cited above be removed.

Thank you for this opportunity to comment on this Bill.