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

10 The purpose of this Act is to prohibit the exercise of the
11 power of eminent domain to take private property and transfer
12 the property to another private entity for development purposes
13 where the receiving private entity had earlier expressed an
14 interest in developing the condemned property.

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



1 "§46-1.5 General powers and limitation of the counties.

2 Subject to general law, each county shall have the following
3 powers and shall be subject to the following liabilities and
4 limitations:

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



1 liability contrary to the provisions of any county
2 charter or general law;

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

7 (5) Each county shall have the power to maintain channels,
8 whether natural or artificial, including their exits
9 to the ocean, in suitable condition to carry off storm
10 waters; and to remove from the channels, and from the
11 shores and beaches, any debris that is likely to
12 create an unsanitary condition or become a public
13 nuisance; provided that, to the extent any of the
14 foregoing work is a private responsibility, the
15 responsibility may be enforced by the county in lieu
16 of the work being done at public expense. Counties
17 also shall have the power to construct, acquire by
18 gift, purchase, or by the exercise of eminent domain,
19 reconstruct, improve, better, extend, and maintain
20 projects or undertakings for the control of and
21 protection against floods and flood waters, including
22 the power to drain and rehabilitate lands already



1 flooded, and to enact zoning ordinances providing that
2 lands deemed subject to reasonable, periodic, or
3 occasional flooding shall not be used for residence or
4 other purposes in a manner as to endanger the health
5 or safety of the occupants thereof, as required by the
6 Federal Flood Insurance Act of 1956 (chapter 1025,
7 Public Law 1016);

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

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, and in these connections, to



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



1 (14) Each county shall have the power to make and enforce
2 within the limits of the county all necessary
3 ordinances covering: all local police matters; all
4 matters of sanitation; all matters of inspection of
5 buildings; all matters of condemnation of unsafe
6 structures, plumbing, sewers, dairies, milk, fish, and
7 morgues; all matters of the collection and disposition
8 of rubbish and garbage; and to provide exemptions for
9 homeless facilities and any other program for the
10 homeless authorized by chapter [~~201G,~~] 201H or 356D
11 for all matters under this paragraph; and to appoint
12 county physicians and sanitary and other inspectors as
13 necessary to carry into effect ordinances made under
14 this paragraph, who shall have the same power as given
15 by law to agents of the department of health, subject
16 only to limitations placed on them by the terms and
17 conditions of their appointments; and to fix a penalty
18 for the violation of any ordinance, which penalty may
19 be a misdemeanor, petty misdemeanor, or violation as
20 defined by general law;

21 (15) Each county shall have the power to provide public
22 pounds, to regulate the impounding of stray animals



1 and fowl, and their disposition, and to provide for
2 the appointment, powers, duties, and fees of animal
3 control officers;

4 (16) Each county shall have the power to purchase and
5 otherwise acquire, lease, and hold real and personal
6 property within the defined boundaries of the county
7 and to dispose of the real and personal property as
8 the interests of the inhabitants of the county may
9 require, except that: any property held for school
10 purposes may not be disposed of without the consent of
11 the superintendent of education; no property bordering
12 the ocean shall be sold or otherwise disposed of; and
13 all proceeds from the sale of park lands shall be
14 expended only for the acquisition of property for park
15 or recreational purposes;

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

20 (18) Each county shall have the power to make
21 appropriations in amounts deemed appropriate from any
22 moneys in the treasury, for the purpose of community



1 promotion and public celebrations, the entertainment
2 of distinguished persons as may from time to time
3 visit the county, for the entertainment of other
4 distinguished persons as well as public officials when
5 deemed to be in the best interest of the community,
6 and the rendering of civic tribute to individuals who,
7 by virtue of their accomplishments and community
8 service, merit civic commendations, recognition, or
9 remembrance;

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

11 (A) Construct, purchase, take on lease, lease,
12 sublease, or in any other manner acquire, manage,
13 maintain, or dispose of buildings for county
14 purposes, sewers, sewer systems, pumping
15 stations, waterworks, including reservoirs,
16 wells, pipelines, and other conduits for
17 distributing water to the public, lighting
18 plants, and apparatus and appliances for lighting
19 streets and public buildings and manage,
20 regulate, and control the same;

21 (B) Regulate and control the location and quality of
22 all appliances necessary to the furnishing of



1 water, heat, light, power, telephonic, and
2 telegraphic service to the county;

3 (C) Acquire, regulate, and control any and all
4 appliances for the sprinkling and cleaning of the
5 streets and the public ways and for flushing the
6 sewers; and

7 (D) Open, close, construct, or maintain county
8 highways or charge toll on county highways;
9 provided that all revenues received from a toll
10 charge shall be used for the construction or
11 maintenance of county highways;

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

15 (21) Unless otherwise provided by law, each county shall
16 have the power to establish by ordinance the order of
17 succession of county officials in the event of a
18 military or civil disaster;

19 (22) Each county shall have the power to sue and be sued in
20 its corporate name;

21 (23) Each county shall have the power to establish and
22 maintain waterworks and sewer works; to collect rates



1 for water supplied to consumers and for the use of
 2 sewers; to install water meters whenever deemed
 3 expedient; provided that owners of premises having
 4 vested water rights under existing laws appurtenant to
 5 the premises shall not be charged for the installation
 6 or use of the water meters on the premises; to take
 7 over from the State existing waterworks systems,
 8 including water rights, pipelines, and other
 9 appurtenances belonging thereto, and sewer systems,
 10 and to enlarge, develop, and improve the same;

11 (24) (A) Each county may impose civil fines, in addition
 12 to criminal penalties, for any violation of
 13 county ordinances or rules after reasonable
 14 notice and requests to correct or cease the
 15 violation have been made upon the violator. Any
 16 administratively imposed civil fine shall not be
 17 collected until after an opportunity for a
 18 hearing under chapter 91. Any appeal shall be
 19 filed within thirty days from the date of the
 20 final written decision. These proceedings shall
 21 not be a prerequisite for any civil fine or
 22 injunctive relief ordered by the circuit court;



1 (B) Each county by ordinance may provide for the
2 addition of any unpaid civil fines, ordered by
3 any court of competent jurisdiction, to any
4 taxes, fees, or charges, with the exception of
5 fees or charges for water for residential use and
6 sewer charges collected by the county. Each
7 county by ordinance may also provide for the
8 addition of any unpaid administratively imposed
9 civil fines, which remain due after all judicial
10 review rights under section 91-14 are exhausted,
11 to any taxes, fees, or charges, with the
12 exception of water for residential use and sewer
13 charges, collected by the county. The ordinance
14 shall specify the administrative procedures for
15 the addition of the unpaid civil fines to the
16 eligible taxes, fees, or charges and may require
17 hearings or other proceedings. After addition of
18 the unpaid civil fines to the taxes, fees, or
19 charges, the unpaid civil fines shall not become
20 a part of any taxes, fees, or charges. The
21 county by ordinance may condition the issuance or
22 renewal of a license, approval, or permit for



1 which a fee or charge is assessed, except for
2 water for residential use and sewer charges, on
3 payment of the unpaid civil fines. Upon
4 recordation of a notice of unpaid civil fines in
5 the bureau of conveyances, the amount of the
6 civil fines, including any increase in the amount
7 of the fine which the county may assess, shall
8 constitute a lien upon all real property or
9 rights to real property belonging to any person
10 liable for the unpaid civil fines. The lien in
11 favor of the county shall be subordinate to any
12 lien in favor of any person recorded or
13 registered prior to the recordation of the notice
14 of unpaid civil fines and senior to any lien
15 recorded or registered after the recordation of
16 the notice. The lien shall continue until the
17 unpaid civil fines are paid in full or until a
18 certificate of release or partial release of the
19 lien, prepared by the county at the owner's
20 expense, is recorded. The notice of unpaid civil
21 fines shall state the amount of the fine as of
22 the date of the notice and maximum permissible



1 daily increase of the fine. The county shall not
2 be required to include a social security number,
3 state general excise taxpayer identification
4 number, or federal employer identification number
5 on the notice. Recordation of the notice in the
6 bureau of conveyances shall be deemed, at such
7 time, for all purposes and without any further
8 action, to procure a lien on land registered in
9 land court under chapter 501. After the unpaid
10 civil fines are added to the taxes, fees, or
11 charges as specified by county ordinance, the
12 unpaid civil fines shall be deemed immediately
13 due, owing and delinquent and may be collected in
14 any lawful manner. The procedure for collection
15 of unpaid civil fines authorized in this
16 paragraph shall be in addition to any other
17 procedures for collection available to the State
18 and county by law or rules of the courts;

19 (C) Each county may impose civil fines upon any
20 person who places graffiti on any real or
21 personal property owned, managed, or maintained
22 by the county. The fine may be up to \$1,000 or



1 may be equal to the actual cost of having the
2 damaged property repaired or replaced. The
3 parent or guardian having custody of a minor who
4 places graffiti on any real or personal property
5 owned, managed, or maintained by the county shall
6 be jointly and severally liable with the minor
7 for any civil fines imposed hereunder. Any such
8 fine may be administratively imposed after an
9 opportunity for a hearing under chapter 91, but
10 such a proceeding shall not be a prerequisite for
11 any civil fine ordered by any court. As used in
12 this subparagraph, "graffiti" means any
13 unauthorized drawing, inscription, figure, or
14 mark of any type intentionally created by paint,
15 ink, chalk, dye, or similar substances;

16 (D) At the completion of an appeal in which the
17 county's enforcement action is affirmed and upon
18 correction of the violation if requested by the
19 violation, the case will be reviewed by the county
20 agency that imposed the civil fines to determine
21 the appropriateness of the amount of the civil
22 fines that accrued while the appeal proceedings



1 were pending. In its review of the amount of the
2 accrued fines, the county agency may consider the
3 following: nature and egregiousness of the
4 violation, duration of the violation, number of
5 recurring and other similar violations, effort
6 taken by the violator to correct the violation,
7 degree of involvement in causing or continuing
8 the violation, reasons for any delay in the
9 completion of the appeal, and other extenuating
10 circumstances. The civil fine which is imposed
11 by administrative order after this review is
12 completed and the violation is corrected is
13 subject to only judicial review, notwithstanding
14 any provisions for administrative review in
15 county charters;

16 (E) After completion of a review of the amount of
17 accrued civil fine by the county agency which
18 imposed the fine, the amount of the civil fine
19 determined appropriate, including both the
20 initial civil fine and any accrued daily civil
21 fine, shall immediately become due and
22 collectible following reasonable notice to the



1 violator. If no review of the accrued civil fine
2 is requested, the amount of the civil fine, not
3 to exceed the total accrual of civil fine prior
4 to correcting the violation, shall immediately
5 become due and collectible following reasonable
6 notice to the violator, at the completion of all
7 appeal proceedings;

8 (F) If no county agency exists to conduct appeal
9 proceedings for a particular civil fine action
10 taken by the county, then one shall be
11 established by ordinance before the county shall
12 impose that civil fine;

13 (25) Any law to the contrary notwithstanding, any county
14 mayor may exempt by executive order donors, provider
15 agencies, homeless facilities, and any other program
16 for the homeless under chapter [~~201G~~] 201H or 356D
17 from real property taxes, water and sewer development
18 fees, rates collected for water supplied to consumers
19 and for use of sewers, and any other county taxes,
20 charges, or fees; provided that any county may enact
21 ordinances to regulate and grant the exemptions
22 granted by this paragraph;



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

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

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

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



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



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

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect on July 1, 2050.



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. (SD1)

