

JAN 21 2011

S.B. NO. 867

A BILL FOR AN ACT

RELATING TO EMINENT DOMAIN.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§46-1.5 General powers and limitation of the counties.

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

- 7 (1) Each county shall have the power to frame and adopt a
8 charter for its own self-government that shall
9 establish the county executive, administrative, and
10 legislative structure and organization, including but
11 not limited to the method of appointment or election
12 of officials, their duties, responsibilities, and
13 compensation, and the terms of their office;
- 14 (2) Each county shall have the power to provide for and
15 regulate the marking and lighting of all buildings and
16 other structures that may be obstructions or hazards
17 to aerial navigation, so far as may be necessary or



proper for the protection and safeguarding of life,
health, and property;

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

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

(5) Each county shall have the power to:

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

(B) Remove from the channels, and from the shores and
beaches, any debris that is likely to create an
unsanitary condition or become a public nuisance;
provided that, to the extent any of the foregoing
work is a private responsibility, the



1 responsibility may be enforced by the county in
2 lieu of the work being done at public expense;
3 (C) Construct, acquire by gift, purchase, or by the
4 exercise of eminent domain, reconstruct, improve,
5 better, extend, and maintain projects or
6 undertakings for the control of and protection
7 against floods and flood waters, including the
8 power to drain and rehabilitate lands already
9 flooded; and

10 (D) Enact zoning ordinances providing that lands
11 deemed subject to seasonable, periodic, or
12 occasional flooding shall not be used for
13 residence or other purposes in a manner as to
14 endanger the health or safety of the occupants
15 thereof, as required by the Federal Flood
16 Insurance Act of 1956 (chapter 1025, Public Law
17 1016);

18 (6) Each county shall have the power to exercise the power
19 of condemnation by eminent domain in accordance with
20 section 46-61 when it is in the public interest to do
21 so; provided that no county shall condemn private
22 property and subsequently transfer that same property



1 to a private entity that expressed interest in
2 purchasing that same property for development or
3 commercial purposes or private use before the
4 condemnation;

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

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

11 (9) Each county shall have the power to provide by
12 ordinance assessments for the improvement or
13 maintenance of districts within the county;

14 (10) Except as otherwise provided, no county shall have the
15 power to give or loan credit to, or in aid of, any
16 person or corporation, directly or indirectly, except
17 for a public purpose;

18 (11) Where not within the jurisdiction of the public
19 utilities commission, each county shall have the power
20 to regulate by ordinance the operation of motor
21 vehicle common carriers transporting passengers within



1 the county and adopt and amend rules the county deems
2 necessary for the public convenience and necessity;

3 (12) Each county shall have the power to enact and enforce
4 ordinances necessary to prevent or summarily remove
5 public nuisances and to compel the clearing or removal
6 of any public nuisance, refuse, and uncultivated
7 undergrowth from streets, sidewalks, public places,
8 and unoccupied lots. In connection with these powers,
9 each county may impose and enforce liens upon the
10 property for the cost to the county of removing and
11 completing the necessary work where the property
12 owners fail, after reasonable notice, to comply with
13 the ordinances. The authority provided by this
14 paragraph shall not be self-executing, but shall
15 become fully effective within a county only upon the
16 enactment or adoption by the county of appropriate and
17 particular laws, ordinances, or rules defining "public
18 nuisances" with respect to each county's respective
19 circumstances. The counties shall provide the
20 property owner with the opportunity to contest the
21 summary action and to recover the owner's property;



1 (13) Each county shall have the power to enact ordinances
2 deemed necessary to protect health, life, and
3 property, and to preserve the order and security of
4 the county and its inhabitants on any subject or
5 matter not inconsistent with, or tending to defeat,
6 the intent of any state statute where the statute does
7 not disclose an express or implied intent that the
8 statute shall be exclusive or uniform throughout the
9 State;

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

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

13 (i) Local police matters;

14 (ii) Matters of sanitation;

15 (iii) Matters of inspection of buildings;

16 (iv) Matters of condemnation of unsafe

17 structures, plumbing, sewers, dairies, milk,

18 fish, and morgues; and

19 (v) Matters of the collection and disposition of

20 rubbish and garbage;

21 (B) Provide exemptions for homeless facilities and

22 any other program for the homeless authorized by



1 part XVII of chapter 346, for all matters under
2 this paragraph;

3 (C) Appoint county physicians and sanitary and other
4 inspectors as necessary to carry into effect
5 ordinances made under this paragraph, who shall
6 have the same power as given by law to agents of
7 the department of health, subject only to
8 limitations placed on them by the terms and
9 conditions of their appointments; and

10 (D) Fix a penalty for the violation of any ordinance,
11 which penalty may be a misdemeanor, petty
12 misdemeanor, or violation as defined by general
13 law;

14 (15) Each county shall have the power to provide public
15 pounds; to regulate the impounding of stray animals
16 and fowl, and their disposition; and to provide for
17 the appointment, powers, duties, and fees of animal
18 control officers;

19 (16) Each county shall have the power to purchase and
20 otherwise acquire, lease, and hold real and personal
21 property within the defined boundaries of the county
22 and to dispose of the real and personal property as



1 the interests of the inhabitants of the county may
2 require, except that:

3 (A) Any property held for school purposes may not be
4 disposed of without the consent of the
5 superintendent of education;

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

8 (C) All proceeds from the sale of park lands shall be
9 expended only for the acquisition of property for
10 park or recreational purposes;

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

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

18 (A) Community promotion and public celebrations;

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



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

4 (D) The rendering of civic tribute to individuals
5 who, by virtue of their accomplishments and
6 community service, merit civic commendations,
7 recognition, or remembrance;

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

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

19 (B) Regulate and control the location and quality of
20 all appliances necessary to the furnishing of
21 water, heat, light, power, telephone, and
22 telecommunications service to the county;



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

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

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

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

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

(23) Each county shall have the power to establish and maintain waterworks and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed



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

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



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



1 payment of the unpaid civil fines. Upon
2 recordation of a notice of unpaid civil fines in
3 the bureau of conveyances, the amount of the
4 civil fines, including any increase in the amount
5 of the fine which the county may assess, shall
6 constitute a lien upon all real property or
7 rights to real property belonging to any person
8 liable for the unpaid civil fines. The lien in
9 favor of the county shall be subordinate to any
10 lien in favor of any person recorded or
11 registered prior to the recordation of the notice
12 of unpaid civil fines and senior to any lien
13 recorded or registered after the recordation of
14 the notice. The lien shall continue until the
15 unpaid civil fines are paid in full or until a
16 certificate of release or partial release of the
17 lien, prepared by the county at the owner's
18 expense, is recorded. The notice of unpaid civil
19 fines shall state the amount of the fine as of
20 the date of the notice and maximum permissible
21 daily increase of the fine. The county shall not
22 be required to include a social security number,



1 state general excise taxpayer identification
2 number, or federal employer identification number
3 on the notice. Recordation of the notice in the
4 bureau of conveyances shall be deemed, at such
5 time, for all purposes and without any further
6 action, to procure a lien on land registered in
7 land court under chapter 501. After the unpaid
8 civil fines are added to the taxes, fees, or
9 charges as specified by county ordinance, the
10 unpaid civil fines shall be deemed immediately
11 due, owing, and delinquent and may be collected
12 in any lawful manner. The procedure for
13 collection of unpaid civil fines authorized in
14 this paragraph shall be in addition to any other
15 procedures for collection available to the State
16 and county by law or rules of the courts;

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



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

14 (D) At the completion of an appeal in which the
15 county's enforcement action is affirmed and upon
16 correction of the violation if requested by the
17 violator, the case shall be reviewed by the
18 county agency that imposed the civil fines to
19 determine the appropriateness of the amount of
20 the civil fines that accrued while the appeal
21 proceedings were pending. In its review of the



amount of the accrued fines, the county agency
may consider:

- (i) The nature and egregiousness of the
violation;
- (ii) The duration of the violation;
- (iii) The number of recurring and other similar
violations;
- (iv) Any effort taken by the violator to correct
the violation;
- (v) The degree of involvement in causing or
continuing the violation;
- (vi) Reasons for any delay in the completion of
the appeal; and
- (vii) Other extenuating circumstances.

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

- (E) After completion of a review of the amount of
accrued civil fine by the county agency that
imposed the fine, the amount of the civil fine



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

12 (F) If no county agency exists to conduct appeal
13 proceedings for a particular civil fine action
14 taken by the county, then one shall be
15 established by ordinance before the county shall
16 impose the civil fine;

17 (25) Any law to the contrary notwithstanding, any county
18 mayor, by executive order, may exempt donors, provider
19 agencies, homeless facilities, and any other program
20 for the homeless under part XVII of chapter 346 from
21 real property taxes, water and sewer development fees,
22 rates collected for water supplied to consumers and



1 for use of sewers, and any other county taxes,
2 charges, or fees; provided that any county may enact
3 ordinances to regulate and grant the exemptions
4 granted by this paragraph;

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

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

9 SECTION 2. Section 101-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§101-2 Taking private property for public use; disposal**
12 **of excess property.** Private property may be taken for public
13 use[-]; provided that the public use for purposes of eminent
14 domain powers shall not be construed to include the condemning
15 of private property and the subsequent transfer of that same
16 property to a private entity that expressed an interest in
17 purchasing that same property for development or commercial
18 purposes or private use before the condemnation. Private
19 property may also be taken by the State or any county in excess
20 of that needed for such public use in cases where small remnants
21 would otherwise be left or where other justifiable cause
22 necessitates such taking to protect and preserve the



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



1 the applicable zoning regulations, is of a configuration or
2 topography which in the judgment of the appropriate county
3 zoning authority cannot be put to a reasonable use in accordance
4 with applicable zoning regulations, or lacks proper access to a
5 street, it shall be sold by the condemning authority by sealed
6 bid to the abutting owner submitting the highest offer above the
7 appraised value; provided further that if any such excess
8 property abuts more than one parcel, the condemning authority
9 may make application for subdividing such property so that a
10 portion thereof may be sold to each abutting owner at the
11 appraised value if the public interest is best served by such
12 subdivision and disposal. All moneys received from the sale or
13 lease of such excess property shall be paid into the fund or
14 appropriation from which money was taken for the original
15 condemnation and shall be available for the purposes of such
16 fund or appropriation."

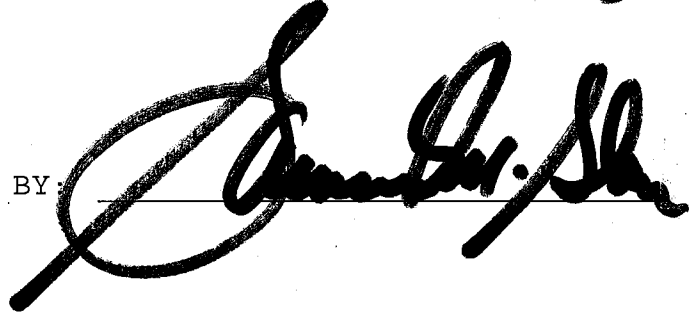
17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect upon its approval.
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21
22



S.B. NO. 867

INTRODUCED BY:

A large, stylized handwritten signature in black ink, appearing to read "Senator Sh", is written over a horizontal line.



Report Title:

Eminent Domain Powers; Restrictions

Description:

Prohibits the State and counties from condemning private property for a private economic interest or for a private entity that expressed an interest in developing that same property for development purposes or private use before the condemnation.

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

