

The draft bill can be summarized as follows:

Bill Calling for Increased Judicial Review

Section 1: This section describes the Kelo decision and why the legislature feels it is necessary to enact legislation in light of that decision. The legislature declares that takings for private purposes and for economic development do not fit within the definition of "public use" under the Hawaii constitution. The purpose of the act is to strengthen the right of Hawaii's people to be protected from improper takings, and also to strengthen property owner's right to adequate compensation.

Section 2: This section conditions the power of the counties to condemn under HRS Ch. 46. Summarizing, it prohibits a private or pretextual taking, as well as prohibiting a taking for economic development. A determination or finding by the government that a taking is for a public purpose is not binding on the courts. (Under present law, a determination of public purpose by the government is given almost total deference by the courts.)

If the taking is challenged by the condemnee, the condemnor will have to come forward with clear and convincing evidence to demonstrate that the taking is actually for a public purpose where either the property will be transferred to a private party, or the acquisition is being financed by private funds. For takings in other circumstances, the condemnor will still have to show by a preponderance of the evidence that the taking is for a public purpose.

As indicated, this is a distinct change from present Hawaii law. Presently, simply a legislative declaration that the use is "public" is sufficient for the courts for any type of taking, even if there is no factual evidence to support that determination.

Section 3: This section largely repeats Section 2, but places the language in HRS Ch. 101, which is the general chapter governing condemnation. The reason for this is that Ch. 101 governs actions by the State, whereas Chapter 46 only governs actions by the counties.