

JAN 15 2020

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# A BILL FOR AN ACT

RELATING TO HOUSING.

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

1           SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended  
2 by adding a new section to part I to be appropriately designated  
3 and to read as follows:

4           "§46-     Housing development projects; emergency shelters;  
5 restrictions; fines. (a) No county shall disapprove a housing  
6 development project, or an emergency shelter, or condition  
7 approval in a manner that renders the housing development  
8 project infeasible for development of housing, or an emergency  
9 shelter, including through the use of design review standards,  
10 unless it makes written findings, based upon a preponderance of  
11 the evidence in the record, as to one of the following:

12           (1) The county has met or exceeded any affordable housing  
13 obligation to develop vacant lots, single-family  
14 residences, multi-family residences, or any other type  
15 of residence for sale or rent to individuals with a  
16 specified income range. Any disapproval or  
17 conditional approval pursuant to this paragraph shall



1           be in accordance with applicable laws, rules, or  
2           standards;

3           (2) The housing development project or emergency shelter  
4           as proposed would have a specific, adverse impact upon  
5           the public health or safety, and there is no feasible  
6           method to satisfactorily mitigate or avoid the  
7           specific, adverse impact without rendering the  
8           development of housing or emergency shelter  
9           financially infeasible. Inconsistency with applicable  
10           zoning ordinances or state land use classification  
11           shall not constitute a specific, adverse impact upon  
12           the public health or safety;

13           (3) The denial of the housing development project or  
14           imposition of conditions is required in order to  
15           comply with specific state or federal law, and there  
16           is no feasible method to comply without rendering the  
17           development of housing or emergency shelter  
18           financially infeasible;

19           (4) The housing development project or emergency shelter  
20           is proposed on land within the agricultural district  
21           or conservation district, pursuant to section 205-2,



1           or does not have adequate water or wastewater  
2           facilities to serve the project;

3       (5) The housing development project or emergency shelter  
4       is inconsistent with the applicable zoning ordinances,  
5       county general plan, and state land use  
6       classifications; provided that this paragraph shall  
7       not be used to disapprove or conditionally approve a  
8       housing development project or emergency shelter if:

9       (A) A change was made to the applicable zoning  
10       ordinances, county general plan, or state land  
11       use classification subsequent to the date the  
12       application was deemed complete;

13       (B) The housing development project is proposed on a  
14       site that is identified as suitable or available  
15       for housing, even if it is inconsistent with the  
16       applicable zoning ordinances, county general  
17       plan, and state land use classifications;

18       (C) If the county has failed to identify lands that  
19       can be developed for housing to provide for the  
20       county's share of the regional housing need for  
21       all income levels and the housing development



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1           project is proposed for a site designated in the  
2           county general plan for residential uses, or  
3           commercial uses if residential uses are permitted  
4           or conditionally permitted within commercial  
5           designations. In any action in court, the burden  
6           of proof shall be on the county to show its plan  
7           does identify adequate sites with appropriate  
8           zoning and development standards and with  
9           services and facilities to accommodate the  
10           county's share of the regional housing need;  
11        (D) The emergency shelter is proposed for a site  
12           designated in the county general plan for  
13           industrial, commercial, or multifamily  
14           residential uses and the county has failed to:  
15           (i) Identify a zone where emergency shelters are  
16                allowed as a permitted use without a  
17                conditional use or other discretionary  
18                permit;  
19           (ii) Demonstrate that the identified zone  
20                includes sufficient capacity to accommodate  
21                the need for an emergency shelter; or



1                    (iii) Demonstrate that the identified zone can  
2                    accommodate at least one emergency shelter.

3            (b) Nothing in this section shall be construed to prohibit  
4 a county from requiring the housing development project to  
5 comply with objective, quantifiable, written development  
6 standards, conditions, and policies appropriate to, and  
7 consistent with, meeting the county's share of the regional  
8 housing need; provided that the development standards,  
9 conditions, and policies shall be applied to facilitate and  
10 accommodate development at the density allowed on the site and  
11 proposed by the development.

12            (c) Nothing in this section shall be construed to prohibit  
13 a county from requiring an emergency shelter project to comply  
14 with objective, quantifiable, written development standards,  
15 conditions, and policies; provided that the development  
16 standards, conditions, and policies shall be applied by the  
17 county to facilitate and accommodate the development of the  
18 emergency shelter.

19            (d) This section does not prohibit a county from imposing  
20 fees and other exactions otherwise authorized by law that are



1 essential to provide necessary public services and facilities to  
2 the housing development project or emergency shelter.

3 (e) For purposes of this section, a housing development  
4 project or emergency shelter shall be deemed consistent,  
5 compliant, and in conformity with an applicable plan, program,  
6 policy, ordinance, standard, requirement, or other similar  
7 provision if there is substantial evidence that would allow a  
8 reasonable person to conclude that the housing development  
9 project or emergency shelter is consistent, compliant, or in  
10 conformity.

11 (f) If any county denies approval or imposes conditions,  
12 including design changes, lower density, or a reduction of the  
13 percentage of a lot that may be occupied by a building or  
14 structure under the applicable planning and zoning in force at  
15 the time the application is deemed complete, and the denial of  
16 the development or the imposition of conditions on the  
17 development is the subject of a court action that challenges the  
18 denial or the imposition of conditions, then the burden of proof  
19 shall be on the county to show that its decision is consistent  
20 with the findings as described in subsection (a) and that the



1 findings are supported by a preponderance of the evidence in the  
2 record.

3       (g) When a proposed housing development project complies  
4 with applicable, objective county general plan, zoning, and  
5 subdivision standards and criteria, including design review  
6 standards, in effect at the time that the housing development  
7 project's application is determined to be complete, but the  
8 county proposes to disapprove the project or to impose a  
9 condition that the project be developed at a lower density, the  
10 county shall base its decision regarding the proposed housing  
11 development project upon written findings supported by a  
12 preponderance of the evidence on the record that the following  
13 conditions exist:

14       (1) The housing development project would have a specific,  
15 adverse impact upon the public health or safety unless  
16 the housing development project is disapproved or  
17 approved upon the condition that the housing  
18 development project be developed at a lower density;  
19 and

20       (2) There is no feasible method to satisfactorily mitigate  
21 or avoid the adverse impact other than the disapproval



1           of the housing development project or the approval of  
2           the housing development project upon the condition  
3           that it be developed at a lower density.

4           (h) If the county considers a proposed housing development  
5 project to be inconsistent, not in compliance, or not in  
6 conformity with an applicable plan, program, policy, ordinance,  
7 standard, requirement, or other similar provision as specified  
8 in this part, the county shall provide the applicant with  
9 written documentation identifying the provision, and an  
10 explanation of the reason the county considers the housing  
11 development to be inconsistent, not in compliance, or not in  
12 conformity as follows:

13           (1) Within thirty days of the date that the application  
14           for the housing development project is determined to  
15           be complete, if the housing development project  
16           contains one hundred fifty or fewer housing units; or

17           (2) Within sixty days of the date that the application for  
18           the housing development project is determined to be  
19           complete, if the housing development project contains  
20           more than one hundred fifty units.





1        (i) If the county fails to provide the required  
2 documentation pursuant to subsection (h), the housing  
3 development project shall be deemed consistent, compliant, and  
4 in conformity with the applicable plan, program, policy,  
5 ordinance, standard, requirement, or other similar provision.

6        (j) The applicant, a person who would be eligible to apply  
7 for residency in the housing development project or emergency  
8 shelter, or a housing organization may bring an action to  
9 enforce this section. If, in any action brought to enforce this  
10 section, a court finds that either the county, in violation of  
11 subsection (a), disapproved a housing development project or  
12 conditioned its approval in a manner rendering it infeasible for  
13 the development of housing or an emergency shelter, without  
14 making the findings required by this section or without making  
15 findings supported by a preponderance of the evidence, or the  
16 county, in violation of subsection (g), disapproved a housing  
17 development project complying with applicable, objective county  
18 general plan and zoning standards and criteria, or imposed a  
19 condition that the housing development project be developed at a  
20 lower density, without making the findings required by this  
21 section or without making findings supported by a preponderance



1 of the evidence, the court shall issue an order or judgment  
2 compelling compliance with this section within sixty days,  
3 including but not limited to an order that the county take  
4 action on the housing development project or emergency shelter.  
5 The court may issue an order or judgment directing the county to  
6 approve the housing development project or emergency shelter if  
7 the court finds that the county acted in bad faith when it  
8 disapproved or conditionally approved the housing development  
9 project or emergency shelter in violation of this section. The  
10 court shall retain jurisdiction to ensure that its order or  
11 judgment is carried out and shall award reasonable attorney's  
12 fees and costs of suit to the plaintiff or petitioner, except  
13 under extraordinary circumstances in which the court finds that  
14 awarding fees would not further the purposes of this section.

15 (k) Upon a determination that the county has failed to  
16 comply with the order or judgment compelling compliance with  
17 this section within sixty days issued pursuant to subsection  
18 (j), the court shall impose fines on the county that has  
19 violated this section. The fine shall be in a minimum amount of  
20 \$10,000 per housing unit in the housing development project on  
21 the date the application was deemed complete.



1        (1) If the court determines that its order or judgment has  
2 not been carried out within sixty days, the court may issue  
3 further orders as provided by law to ensure that the purposes  
4 and policies of this section are fulfilled.

5        (m) For the purposes of this section:

6        "Housing development project" means a use consisting of any  
7 of the following:

8        (1) Residential units that are priced to be affordable to  
9 residents at one hundred per cent area medium income  
10 only;

11        (2) Mixed-use developments consisting of residential and  
12 nonresidential uses with at least two-thirds of the  
13 square footage designated for residential use; or

14        (3) Transitional housing or supportive housing.

15        "Housing organization" means a trade or industry group  
16 whose local members are primarily engaged in the construction or  
17 management of housing units or a nonprofit organization whose  
18 mission includes providing or advocating for increased access to  
19 housing for low income households and have filed written or oral  
20 comments with the local agency prior to action on the housing  
21 development project.



1        "Lower density" includes any conditions that have the same  
2 effect or impact on the ability of the project to provide  
3 housing.

4        "Specific, adverse impact" means a significant,  
5 quantifiable, direct, and unavoidable impact, based on  
6 objective, identified written public health or safety standards,  
7 policies, or conditions as they existed on the date an  
8 application was deemed complete.

9        (n) This section shall be known and may be cited as the  
10 Housing Accountability Act."



11        SECTION 2. This Act does not affect rights and duties that  
12 matured, penalties that were incurred, and proceedings that were  
13 begun before its effective date.

14        SECTION 3. New statutory material is underscored.

15        SECTION 4. This Act shall take effect upon its approval.

16

INTRODUCED BY:



# S.B. NO. 2037

**Report Title:**

Housing Development Project; Emergency Shelters

**Description:**

Restricts any county from disapproving or imposing certain conditions on a housing development project for housing or an emergency shelter unless the county meets certain requirements.

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

