
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) If the county has failed to identify lands that
14 can be developed for housing to provide for the
15 county's share of the regional housing need for
16 all income levels and the housing development
17 project is proposed for a site designated in the
18 county general plan for residential uses, or
19 commercial uses if residential uses are permitted
20 or conditionally permitted within commercial
21 designations. In any action in court, the burden



1 of proof shall be on the county to show that its
2 plan identifies adequate sites with appropriate
3 zoning and development standards and with
4 services and facilities to accommodate the
5 county's share of the regional housing need;
6 (C) The emergency shelter is proposed for a site
7 designated in the county general plan for
8 industrial, commercial, or multifamily
9 residential uses and the county has failed to:
10 (i) Identify a zone where emergency shelters are
11 allowed as a permitted use without a
12 conditional use or other discretionary
13 permit;
14 (ii) Demonstrate that the identified zone
15 includes sufficient capacity to accommodate
16 the need for an emergency shelter; or
17 (iii) Demonstrate that the identified zone can
18 accommodate at least one emergency shelter.
19 (b) Nothing in this section shall be construed to prohibit
20 a county from requiring the housing development project to
21 comply with objective, quantifiable, written development



1 standards, conditions, and policies appropriate to, and
2 consistent with, meeting the county's share of the regional
3 housing need; provided that the development standards,
4 conditions, and policies shall be applied to facilitate and
5 accommodate development at the density allowed on the site and
6 proposed by the development.

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

14 (d) This section does not prohibit a county from imposing
15 fees and other exactions otherwise authorized by law that are
16 essential to provide necessary public services and facilities to
17 the housing development project or emergency shelter.

18 (e) For purposes of this section, a housing development
19 project or emergency shelter shall be deemed consistent,
20 compliant, and in conformity with an applicable plan, program,
21 policy, ordinance, standard, requirement, or other similar



1 provision if there is substantial evidence that would allow a
2 reasonable person to conclude that the housing development
3 project or emergency shelter is consistent, compliant, or in
4 conformity.

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

17 (g) When a proposed housing development project complies
18 with applicable, objective county general plan, zoning, and
19 subdivision standards and criteria, including design review
20 standards, in effect at the time that the housing development
21 project's application is determined to be complete, but the



1 county proposes to disapprove the project or to impose a
2 condition that the project be developed at a lower density, the
3 county shall base its decision regarding the proposed housing
4 development project upon written findings supported by a
5 preponderance of the evidence on the record that the following
6 conditions exist:

7 (1) The housing development project would have a specific,
8 adverse impact upon the public health or safety unless
9 the housing development project is disapproved or
10 approved upon the condition that the housing
11 development project be developed at a lower density;
12 and

13 (2) There is no feasible method to satisfactorily mitigate
14 or avoid the adverse impact other than the disapproval
15 of the housing development project or the approval of
16 the housing development project upon the condition
17 that it be developed at a lower density.

18 (h) If the county considers a proposed housing development
19 project to be inconsistent, not in compliance, or not in
20 conformity with an applicable plan, program, policy, ordinance,
21 standard, requirement, or other similar provision as specified



1 in this part, the county shall provide the applicant with
2 written documentation identifying the provision, and an
3 explanation of the reason the county considers the housing
4 development to be inconsistent, not in compliance, or not in
5 conformity as follows:

6 (1) Within thirty days of the date that the application
7 for the housing development project is determined to
8 be complete, if the housing development project
9 contains one hundred fifty or fewer housing units; or

10 (2) Within sixty days of the date that the application for
11 the housing development project is determined to be
12 complete, if the housing development project contains
13 more than one hundred fifty units.

14 (i) If the county fails to provide the required
15 documentation pursuant to subsection (h), the housing
16 development project shall be deemed consistent, compliant, and
17 in conformity with the applicable plan, program, policy,
18 ordinance, standard, requirement, or other similar provision.

19 (j) The applicant, a person who would be eligible to apply
20 for residency in the housing development project or emergency
21 shelter, or a housing organization may bring an action to



1 enforce this section. If, in any action brought to enforce this
2 section, a court finds that either the county, in violation of
3 subsection (a), disapproved a housing development project or
4 conditioned its approval in a manner rendering it infeasible for
5 the development of housing or an emergency shelter, without
6 making the findings required by this section or without making
7 findings supported by a preponderance of the evidence, or the
8 county, in violation of subsection (g), disapproved a housing
9 development project complying with applicable, objective county
10 general plan and zoning standards and criteria, or imposed a
11 condition that the housing development project be developed at a
12 lower density, without making the findings required by this
13 section or without making findings supported by a preponderance
14 of the evidence, the court shall issue an order or judgment
15 compelling compliance with this section within sixty days,
16 including but not limited to an order that the county take
17 action on the housing development project or emergency shelter.
18 The court may issue an order or judgment directing the county to
19 approve the housing development project or emergency shelter if
20 the court finds that the county acted in bad faith when it
21 disapproved or conditionally approved the housing development



1 project or emergency shelter in violation of this section. The
2 court shall retain jurisdiction to ensure that its order or
3 judgment is carried out and shall award reasonable attorney's
4 fees and costs of suit to the plaintiff or petitioner, except
5 under extraordinary circumstances in which the court finds that
6 awarding fees would not further the purposes of this section.

7 (k) Upon a determination that the county has failed to
8 comply with the order or judgment compelling compliance with
9 this section within sixty days issued pursuant to subsection
10 (j), the court shall impose fines on the county that has
11 violated this section. The fine shall be in a minimum amount of
12 \$10,000 per housing unit in the housing development project on
13 the date the application was deemed complete. Any fines
14 collected pursuant to this section shall be deposited into the
15 dwelling unit revolving fund created pursuant to
16 section 201H-191.

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

21 (m) For the purposes of this section:



1 "Housing development project" means a use consisting of any
2 of the following:

3 (1) Residential units that are priced to be affordable to
4 residents at or below one hundred per cent area medium
5 income only;

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

9 (3) Transitional housing or supportive housing.

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

17 "Lower density" includes any conditions that have the same
18 effect or impact on the ability of the project to provide
19 housing.

20 "Specific, adverse impact" means a significant,
21 quantifiable, direct, and unavoidable impact, based on



1 objective, identified written public health or safety standards,
2 policies, or conditions as they existed on the date an
3 application was deemed complete.

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

6 SECTION 2. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 3. New statutory material is underscored.

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

11



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. (SD1)

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

