

---

---

# 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 on August 26, 2050.



S.B. NO. 2037  
S.D. 2

**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. Takes effect 8/26/2050. (SD2)

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

