

JAN 17 2024

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 Accountability Act; housing development
5 projects; emergency shelters; restrictions; fines. (a) This
6 section shall be known and may be cited as the Housing
7 Accountability Act.

8 (b) No county shall disapprove a housing development
9 project or an emergency shelter, or condition approval in a
10 manner that renders the development of a housing development
11 project or emergency shelter infeasible, including through the
12 use of design review standards, unless it makes written
13 findings, based upon a preponderance of the evidence in the
14 record, as to one of the following:

15 (1) The housing development project or emergency shelter
16 as proposed would have a specific, adverse impact upon
17 the public health or safety, and there is no feasible



1 method to satisfactorily mitigate or avoid the
2 specific adverse impact without rendering the
3 development of the housing development project or
4 emergency shelter financially infeasible; provided
5 that inconsistency with applicable zoning ordinances
6 or state land use classification shall not constitute
7 a specific adverse impact upon the public health or
8 safety;

9 (2) The denial of the housing development project or
10 imposition of conditions is required in order to
11 comply with specific state or federal law, and there
12 is no feasible method to comply without rendering the
13 development of the housing development project or
14 emergency shelter financially infeasible;

15 (3) The housing development project or emergency shelter
16 is proposed on land within an agricultural district or
17 conservation district, pursuant to section 205-2, or
18 does not have adequate water or wastewater facilities
19 to serve the project; or

20 (4) The housing development project or emergency shelter
21 is inconsistent with the applicable zoning ordinances,



1 county general plan, and state land use
2 classifications; provided that this paragraph shall
3 not be used to disapprove or conditionally approve a
4 housing development project or emergency shelter if:
5 (A) A change was made to the applicable zoning
6 ordinances, county general plan, or state land
7 use classification subsequent to the date the
8 application was deemed complete;
9 (B) The county has failed to identify lands that can
10 be developed for housing to provide for the
11 county's share of the regional housing needs for
12 all income levels and the housing development
13 project is proposed for a site designated in the
14 county general plan for residential uses, or
15 commercial uses if residential uses are permitted
16 or conditionally permitted within commercial
17 designations. In any action in court, the burden
18 of proof shall be on the county to show that its
19 plan identifies adequate sites with appropriate
20 zoning and development standards and with



1 services and facilities to accommodate the
2 county's share of the regional housing need; or
3 (C) The emergency shelter is proposed for a site
4 designated in the county general plan for
5 industrial, commercial, or multifamily
6 residential uses and the county has failed to:
7 (i) Identify a zone where emergency shelters are
8 allowed as a permitted use without a
9 conditional use or other discretionary
10 permit;
11 (ii) Demonstrate that the identified zone
12 includes insufficient capacity to
13 accommodate the need for an emergency
14 shelter; or
15 (iii) Demonstrate that the identified zone cannot
16 accommodate at least one emergency shelter.
17 (c) Nothing in this section shall be construed to prohibit
18 a county from requiring the housing development project to
19 comply with objective, quantifiable, and written development
20 standards, conditions, and policies appropriate to, and
21 consistent with, meeting the county's share of the regional



1 housing need; provided that the development standards,
2 conditions, and policies shall be applied to facilitate and
3 accommodate development at the density allowed on the site and
4 proposed by the development.

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

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

16 (f) For purposes of this section, a housing development
17 project or emergency shelter shall be deemed consistent,
18 compliant, and in conformity with an applicable plan, program,
19 policy, ordinance, standard, requirement, or other similar
20 provision if there is substantial evidence that would allow a
21 reasonable person to conclude that the housing development



1 project or emergency shelter is consistent, compliant, or in
2 conformity.

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

13 (h) When a proposed housing development project complies
14 with applicable, objective county general plan, zoning, and
15 subdivision standards and criteria, including design review
16 standards, in effect at the time that the housing development
17 project's application is determined to be complete, but the
18 county proposes to disapprove the project or to impose a
19 condition that the project be developed at a lower density, the
20 county shall base its decision regarding the proposed housing
21 development project upon written findings supported by a



1 preponderance of the evidence on the record that the following
2 conditions exist:

3 (1) The housing development project would have a specific
4 adverse impact on public health or safety unless the
5 housing development project is disapproved or approved
6 upon the condition that the housing development
7 project be developed at a lower density; and

8 (2) There is no feasible method to satisfactorily mitigate
9 or avoid the adverse impact other than the disapproval
10 of the housing development project or the approval of
11 the housing development project upon the condition
12 that it be developed at a lower density.

13 (i) If the county considers a proposed housing development
14 project to be inconsistent, not in compliance, or not in
15 conformity with an applicable plan, program, policy, ordinance,
16 standard, requirement, or other similar provision as specified
17 in this part, the county shall provide the applicant with
18 written documentation identifying the provision and an
19 explanation of the reason the county considers the housing
20 development to be inconsistent, not in compliance, or not in
21 conformity as follows:



1 (1) Within thirty days of the date that the application
2 for the housing development project is determined to
3 be complete, if the housing development project
4 contains one hundred fifty or fewer housing units; or
5 (2) Within sixty days of the date that the application for
6 the housing development project is determined to be
7 complete, if the housing development project contains
8 more than one hundred fifty units.
9 (j) If the county fails to provide the required
10 documentation pursuant to subsection (i), the housing
11 development project shall be deemed consistent, compliant, and
12 in conformity with the applicable plan, program, policy,
13 ordinance, standard, requirement, or other similar provision.
14 (k) The applicant, a person who would be eligible to apply
15 for residency in the housing development project or emergency
16 shelter, or a housing organization may bring an action to
17 enforce this section. If, in any action brought to enforce this
18 section, a court finds that either the county, in violation of
19 subsection (b), disapproved a housing development project or an
20 emergency shelter or conditioned its approval in a manner
21 rendering the development of the housing development project or



1 an emergency shelter infeasible without making the findings
2 required by this section or without making findings supported by
3 a preponderance of the evidence in the record, or the county, in
4 violation of subsection (h), disapproved a housing development
5 project that complies with applicable, objective county general
6 plan, zoning, and subdivision standards and criteria, or imposed
7 a condition that the housing development project be developed at
8 a lower density, without making the findings required by this
9 section or without making findings supported by a preponderance
10 of the evidence on the record, the court shall issue an order or
11 judgment that compels compliance with this section within sixty
12 days, including but not limited to an order that the county take
13 action on the housing development project or emergency shelter.
14 The court may issue an order or judgment directing the county to
15 approve the housing development project or emergency shelter if
16 the court finds that the county acted in bad faith when it
17 disapproved or conditionally approved the housing development
18 project or emergency shelter in violation of this section. The
19 court shall retain jurisdiction to ensure that its order or
20 judgment is carried out and shall award reasonable attorney's
21 fees and costs of suit to the plaintiff or petitioner, except



1 under extraordinary circumstances in which the court finds that
2 awarding fees would not further the purposes of this section.

3 (l) Upon a determination that the county has failed to
4 comply with the order or judgment compelling compliance with
5 this section within sixty days of the date that the order or
6 judgement was issued pursuant to subsection (k), the court shall
7 impose fines on the county. The fine shall be not less than
8 \$10,000 per housing unit in the housing development project on
9 the date that the application was deemed complete. Any fines
10 collected pursuant to this section shall be deposited into the
11 dwelling unit revolving fund established pursuant to
12 section 201H-191.

13 (m) If the court determines that its order or judgment has
14 not been carried out within sixty days, the court may issue
15 further orders as provided by law to ensure that the purposes of
16 this section are fulfilled.

17 (n) For the purposes of this section:

18 "Housing development project" means a project consisting of
19 any of the following:



1 (1) Residential units that are exclusively for residents
2 of the State who are owner- or renter- occupants and
3 own no other real property; or

4 (2) Transitional housing or supportive housing.

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

12 "Lower density" includes any conditions that have the same
13 effect or impact on the ability of the project to provide
14 housing.

15 "Specific adverse impact" means a significant,
16 quantifiable, direct, and unavoidable impact, based on
17 objective, identified written public health or safety standards,
18 policies, or conditions as they existed on the date an
19 application was deemed complete."



S.B. NO. 2027

Report Title:

Housing Development Project; Emergency Shelters; Counties

Description:

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

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