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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 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) A county shall not consider an application complete  
18 until the county has made a reasonable and good faith  
19 determination that the housing development project or emergency  
20 shelter does not have the potential to affect historic  
21 properties, archeological resources, or burial sites.



1 Alternatively, developers shall submit with its application,  
2 documentation showing that the developer has worked with the  
3 state historic preservation division of the department of land  
4 and natural resources, and has completed any work necessary to  
5 satisfy requirements set forth in chapter 6E.

6 (d) Developers shall show documentation that the housing  
7 development project or emergency shelter does not encroach in  
8 special flood hazard areas identified as "A" or "V" zones on the  
9 Federal Emergency Management Agency's Flood Insurance Rate Maps,  
10 or that the housing development project or emergency shelter has  
11 been reviewed for floodplain management compliance and has been  
12 issued a development permit for construction by the applicable  
13 community official.

14 (e) Nothing in this section shall be construed to prohibit  
15 a county from requiring the housing development project to  
16 comply with objective, quantifiable, and written development  
17 standards, conditions, and policies appropriate to, and  
18 consistent with, meeting the county's share of the regional  
19 housing need; provided that the development standards,  
20 conditions, and policies shall be applied to facilitate and



1 accommodate development at the density allowed on the site and  
2 proposed by the development.

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

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

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



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

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



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

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

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

20       (1) Within thirty days of the date that the application  
21       for the housing development project is determined to





1           be complete, if the housing development project  
2           contains one hundred fifty or fewer housing units; or  
3       (2) Within sixty days of the date that the application for  
4           the housing development project is determined to be  
5           complete, if the housing development project contains  
6           more than one hundred fifty units.

7           (1) If the county fails to provide the required  
8           documentation pursuant to subsection (k), the housing  
9           development project shall be deemed consistent, compliant, and  
10          in conformity with the applicable plan, program, policy,  
11          ordinance, standard, requirement, or other similar provision.

12          (m) The applicant, a person who would be eligible to apply  
13          for residency in the housing development project or emergency  
14          shelter, or a housing organization may bring an action to  
15          enforce this section. If, in any action brought to enforce this  
16          section, a court finds that either the county, in violation of  
17          subsection (b), disapproved a housing development project or an  
18          emergency shelter or conditioned its approval in a manner  
19          rendering the development of the housing development project or  
20          an emergency shelter infeasible without making the findings  
21          required by this section or without making findings supported by



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



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

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

15        (p) For the purposes of this section:

16        "Housing development project" means a project consisting of  
17 any of the following:

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

21        (2) Transitional housing or supportive housing.



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

8       "Lower density" includes any conditions that have the same  
9 effect or impact on the ability of the project to provide  
10 housing.

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

16       SECTION 2. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

19       SECTION 3. New statutory material is underscored.

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



**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. (SD1)

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

