
A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

1 SECTION 1. The legislature finds that in August 2007,
2 Hawaii accepted an invitation by the United State Department of
3 Housing and Urban Development to join the National Call to
4 Action for Affordable Housing through Regulatory Reform. The
5 Call to Action presented an opportunity for Hawaii to receive
6 technical assistance from the federal government and collaborate
7 with other states, counties, municipalities, and organizations
8 to knock down the barriers imposed by governments in hopes of
9 building more affordable housing. Governor Lingle convened a
10 statewide task force comprised of representatives from the
11 counties, business, labor, developers, architects, non-profit
12 providers of services, the State, and the legislature to carry
13 out the mission of the Call to Action and recommend solutions to
14 address barriers to affordable housing.

15 The legislature recognizes that the need for more
16 affordable housing in Hawaii remains a significant problem
17 affecting all segments of society. The development of

1 residential housing is bridled by significant varying
2 regulations placed on the industry at both the state and county
3 levels. Recent analysis shows that regulations and conditions
4 placed on developers can potentially delay a project for up to
5 seven years. This delay in time leads to a level of uncertainty
6 for the housing industry, adds cost to the total development
7 project, jeopardizes funding streams for affordable housing
8 projects, and ultimately results in a more expensive home for
9 the homebuyer or renter.

10 The purpose of this Act is to implement the legislative
11 recommendations of the task force by requiring the counties to
12 identify and designate affordable housing receiving zones to
13 facilitate the development of affordable housing, particularly
14 in transit oriented developments.

15 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
16 amended by adding a new part to be appropriately designated and
17 to read as follows:

18 **"PART . AFFORDABLE HOUSING RECEIVING ZONES**

19 **§201H-A Purpose.** The purpose of this part is to encourage
20 the development of affordable housing in transit oriented
21 developments in the State by providing for the establishment of
22 affordable housing receiving zones. The counties are best

1 equipped to determine where affordable housing developments
2 should be located within geographic areas designated for
3 population growth as determined in general plans adopted by the
4 counties pursuant to section 226-58.

5 **§201H-B Definitions.** As used in this part:

6 "Affordable housing" means housing that is affordable to
7 households with incomes at or below one hundred forty per cent
8 of the median family income as determined by the United States
9 Department of Housing and Urban Development, or such other
10 figure as authorized by the appropriate approving local
11 authority.

12 "Affordable housing receiving zone" means an area nominated
13 by, and within the jurisdiction of, a county government, and
14 subsequently declared by the corporation to be eligible for the
15 benefits of this part.

16 "Commission on transit oriented development" means the
17 commission established pursuant to section 6 of S.B. No. 442,
18 whose purpose is to provide oversight and ensure collaboration
19 among transportation, housing, the environment, economic
20 development, and other stakeholders in transit oriented
21 development.

1 "Corporation" means the Hawaii housing finance and
2 development corporation.

3 "Transit oriented development" means compact, mixed-use
4 development near new or existing public transit facilities that
5 serves, housing, transportation and neighborhood goals.

6 **§201H-C Administration.** The corporation shall administer
7 this part and shall have the following powers and duties, to:

- 8 (1) In consultation with the commission on transit
9 oriented development, establish criteria for
10 determining what areas qualify as affordable housing
11 receiving zones; provided that no affordable housing
12 receiving zone shall include any lands designated
13 important agricultural lands or conservation lands;
14 provided further that the criteria shall be the
15 minimum required for implementation of the purpose of
16 this part;
- 17 (2) Monitor the implementation and operation of this part;
- 18 (3) Conduct a continuing evaluation program of affordable
19 housing receiving zones;
- 20 (4) Assist counties in obtaining the reduction of rules
21 within affordable housing receiving zones;

1 (5) Submit annual reports evaluating the effectiveness of
2 the program and any recommendations for legislation to
3 the legislature and the governor;

4 (6) Administer and enforce the rules adopted by the
5 corporation; and

6 (7) Administer this part in such a manner that the area to
7 be designated as an affordable housing receiving zone
8 will most benefit the area and the State.

9 **§201H-D Affordable housing receiving zone designation.**

10 (a) The governing body of each county shall identify, in the
11 form of a written application to the corporation, areas that may
12 be declared affordable housing receiving zones. Each
13 application shall include a description of the location of the
14 area or areas in question, and a general statement identifying
15 proposed local incentives to complement state and federal
16 incentives, if any.

17 (b) The corporation shall approve the designation of up to
18 twenty areas in each county as affordable housing receiving
19 zones for a period of twenty years. The corporation shall adopt
20 rules setting forth appropriate standards for the designation of
21 affordable housing receiving zones. Private landowners may
22 request that their lands be included in the zones in the form of

1 an overlay zone such that they lose no other previous or future
2 authorized land use zonings and may later negotiate with
3 developers for sufficient consideration to effectuate affordable
4 housing being provided on their lands.

5 **§201H-E Application review.** (a) The corporation shall
6 review each application upon receipt and shall secure any
7 additional information that the corporation deems necessary for
8 the purpose of determining whether the area or areas described
9 qualify as affordable housing receiving zones.

10 (b) In the designation of affordable housing receiving
11 zones, priority shall be given to areas within proximity to new
12 or existing transit facilities.

13 (c) The corporation shall complete its review of the
14 application within sixty days of the last date designated for
15 receipt of an application. After review of an application, the
16 corporation shall approve, in writing, those applications that
17 have provided at least ten areas that qualify as affordable
18 housing receiving zones; provided that the number of allowable
19 affordable housing receiving zones for the county as established
20 under section 201H-D(b), is not exceeded. If an application is
21 denied, the corporation shall inform the governing body in
22 writing of that fact together with the reasons for the denial.

1 Upon denial, the county shall resubmit the application with the
2 changes or modifications necessary until the application is
3 approved.

4 **§201H-F Rules.** The corporation, in consultation with the
5 counties, shall adopt rules pursuant to chapter 91 to implement
6 this part, including rules relating to health, safety, building,
7 planning, zoning, and land use that shall supersede all other
8 inconsistent ordinances and rules relating to the use, zoning,
9 planning, and development of land and construction in an
10 affordable housing receiving zone. Rules adopted under this
11 section shall follow existing law, rules, and ordinances as
12 closely as is consistent with standards meeting minimum
13 requirements of energy efficiency, health, and safety. The
14 corporation may provide by rule that lands within an affordable
15 housing receiving zone shall not be developed beyond existing
16 uses or that improvements thereon shall not be demolished or
17 substantially reconstructed, or provide other restrictions on
18 the use of the zone.

19 **§201H-G Eligibility; qualified affordable housing project.**

20 (a) Any housing project may be eligible to be designated a
21 qualified affordable housing project for purposes of this part
22 if:

- 1 (1) The housing project is established within an
2 affordable housing receiving zone;
- 3 (2) No less than twenty per cent of the units in the
4 housing project are affordable to households with
5 incomes at or below one hundred forty per cent of the
6 area median family income as determined by the United
7 States Department of Housing and Urban Development;
8 and
- 9 (3) The housing project consists of at least fifteen
10 units.

11 (b) A housing project also may be eligible to be
12 designated a qualified affordable housing project for purposes
13 of this part if the housing project qualified as a qualified
14 affordable housing project in an area prior to an area being
15 designated an affordable housing receiving zone.

16 (c) After designation as an affordable housing receiving
17 zone, each qualified affordable housing project in the zone
18 shall annually complete and submit to the corporation, on a form
19 supplied by the corporation, the information necessary for the
20 department to determine whether the housing project qualifies as
21 a qualified affordable housing project. If the corporation
22 determines that the housing project qualifies as a qualified

1 affordable housing project, then the corporation shall approve
2 the completed form and forward copies of the completed and
3 approved form to the governing body of the county.

4 (d) A completed form approved by the corporation, referred
5 to in subsection (c), shall be prima facie evidence of the
6 eligibility of a housing project for the purposes of this
7 section.

8 **§201H-H Local incentives, waivers, and regulatory**

9 **flexibility.** (a) In applying for designation as an affordable
10 housing receiving zone, the applying county shall propose in its
11 application local incentives, which may include, but not be
12 limited to:

- 13 (1) Reduction or waiver of permit fees;
14 (2) Reduction or waiver of user fees;
15 (3) Reduction or waiver of impact fees;
16 (4) Reduction or waiver of water and sewer connection
17 fees;
18 (5) Reduction or waiver of parking requirements;
19 (6) Reduction of real property taxes;
20 (7) Priority permit review;
21 (8) Priority financing, construction, and dedication of
22 infrastructure;

- 1 (9) Density bonuses;
- 2 (10) Height waivers;
- 3 (11) Cluster zoning;
- 4 (12) Exemption from environmental impact reviews for any
- 5 affordable housing project on property that has
- 6 already been zoned for development;
- 7 (13) Design flexibility;
- 8 (14) Site flexibility;
- 9 (15) Reduction or waiver of public facility set aside and
- 10 fees;
- 11 (16) Public facility requirement flexibility; and
- 12 (17) Other public incentives and exemptions proposed in the
- 13 locality's application, which shall be binding upon
- 14 the locality upon designation of the affordable
- 15 housing receiving zone.

16 **§201H-I Termination of an affordable housing receiving**

17 **zone.** Upon designation of an area as an affordable housing

18 receiving zone, the proposals for regulatory flexibility, tax

19 credits, waivers, and other public incentives authorized in this

20 part shall be binding upon the county governing body to the

21 extent and for the period of time specified in the application

22 for zone designation. If the county governing body is unable or

1 unwilling to provide any of the incentives set forth in section
2 201H-H or other incentives acceptable to the corporation, and
3 the corporation has not adopted rules pursuant to section 201H-F
4 that supersede inconsistent ordinances and rules relating to the
5 use, zoning, planning, and development of land and construction
6 in an affordable housing receiving zone, then the affordable
7 housing receiving zone shall terminate. Qualified affordable
8 housing projects located in the affordable housing receiving
9 zone shall be eligible to receive the incentives and waivers
10 provided by this part even though the zone designation has
11 terminated. No housing project may become qualified after the
12 date of zone termination. The county governing body may amend
13 an application submitted pursuant to section 201H-D with the
14 approval of the corporation; provided that the county governing
15 body proposes an incentive equal to or superior to the unamended
16 application."

17 SECTION 3. Section 46-15.1, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Any law to the contrary notwithstanding, any county
20 shall have and may exercise the same powers, subject to
21 applicable limitations, as those granted the Hawaii housing
22 finance and development corporation pursuant to chapter 201H

1 insofar as those powers may be reasonably construed to be
2 exercisable by a county for the purpose of developing,
3 constructing, and providing low- and moderate-income housing;
4 provided that no county shall be empowered to cause the State to
5 issue general obligation bonds to finance a project pursuant to
6 this section; provided further that county projects shall be
7 granted an exemption from general excise or receipts taxes in
8 the same manner as projects of the Hawaii housing finance and
9 development corporation pursuant to section 201H-36; and
10 provided further that section 201H-16 shall not apply to this
11 section unless federal guidelines specifically provide local
12 governments with that authorization and the authorization does
13 not conflict with any state laws. The powers shall include the
14 power, subject to applicable limitations, to:

- 15 (1) Develop and construct dwelling units, alone or in
16 partnership with developers;
- 17 (2) Acquire necessary land by lease, purchase, exchange,
18 or eminent domain;
- 19 (3) Provide assistance and aid to a public agency or other
20 person in developing and constructing new housing and
21 rehabilitating existing housing for elders of low- and
22 moderate-income, other persons of low- and moderate-

- 1 income, and persons displaced by any governmental
2 action, by making long-term mortgage or interim
3 construction loans available;
- 4 (4) Contract with any eligible bidders to provide for
5 construction of urgently needed housing for persons of
6 low- and moderate-income;
- 7 (5) Guarantee the top twenty-five per cent of the
8 principal balance of real property mortgage loans,
9 plus interest thereon, made to qualified borrowers by
10 qualified lenders;
- 11 (6) Enter into mortgage guarantee agreements with
12 appropriate officials of any agency or instrumentality
13 of the United States to induce those officials to
14 commit to insure or to insure mortgages under the
15 National Housing Act, as amended;
- 16 (7) Make a direct loan to any qualified buyer for the
17 downpayment required by a private lender to be made by
18 the borrower as a condition of obtaining a loan from
19 the private lender in the purchase of residential
20 property;
- 21 (8) Provide funds for a share, not to exceed fifty per
22 cent, of the principal amount of a loan made to a

1 qualified borrower by a private lender who is unable
2 otherwise to lend the borrower sufficient funds at
3 reasonable rates in the purchase of residential
4 property; [~~and~~]

5 (9) Establish affordable housing receiving zones pursuant
6 to part of chapter 201H; and

7 [~~(9)~~] (10) Sell or lease completed dwelling units.

8 For purposes of this section, a limitation is applicable to
9 the extent that it may reasonably be construed to apply to a
10 county."

11 SECTION 4. Section 226-58, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) County general plans shall be formulated on the basis
14 of sound rationale, data, analyses, and input from state and
15 county agencies and the general public, and contain objectives
16 and policies as required by the charter of each county.

17 Further, the county general plans should:

18 (1) Contain objectives to be achieved and policies to be
19 pursued with respect to population density, land use,
20 transportation system location, public and community
21 facility locations, water and sewage system locations,
22 affordable housing receiving zones, visitor

- 1 destinations, urban design, and all other matters
2 necessary for the coordinated development of the
3 county and regions within the county; [~~and~~]
- 4 (2) Contain implementation priorities and actions to carry
5 out policies to include but not be limited to land use
6 maps, programs, projects, regulatory measures,
7 standards and principles, and interagency coordination
8 provisions[-]; and
- 9 (3) Contain implementation actions to identify, designate,
10 and establish affordable housing receiving zones
11 pursuant to part of chapter 201H."

12 SECTION 5. It is the intent of this Act not to jeopardize
13 the receipt of any federal aid nor to impair the obligation of
14 the State or any agency thereof to the holders of any bond
15 issued by the State or by any such agency, and to the extent,
16 and only to the extent, necessary to effectuate this intent, the
17 governor may modify the strict provisions of this Act, but shall
18 promptly report any such modification with reasons therefor to
19 the legislature at its next session thereafter for review by the
20 legislature.

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

4 SECTION 7. If any provision of this Act, or the
5 application thereof to any person or circumstance is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act, which can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 8. In codifying the new sections added by
11 section 2 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act, and upon codifying the new chapter
14 that establishes the commission on transit oriented development,
15 as proposed by S.B. No. 442 (2009) and as referred to in
16 section 2 of this Act, the revisor of statutes shall substitute
17 the appropriate Hawaii Revised Statutes section number for the
18 reference to section 6 of S.B. No. 442 in section 2 of this Act.

19 SECTION 9. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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

Report Title:

Affordable Housing; Receiving Zones

Description:

Requires the counties to identify and designate affordable housing receiving zones to facilitate the development of affordable housing. (SD1)