

JAN 26 2009

A BILL FOR AN ACT

RELATING TO AFFORDABLE HOUSING.

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

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

16 The Legislature recognizes that the need for more
17 affordable housing in Hawaii remains a significant problem
18 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 authorize the counties to
11 identify and designate affordable housing receiving zones to
12 facilitate the development of affordable housing.

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

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

17 **§201H-A Purpose.** The purpose of this part is to encourage
18 the development of affordable housing in this State by providing
19 for the establishment of affordable housing receiving zones.
20 The counties are best equipped to determine where affordable
21 housing developments should be located within geographic areas

1 designated for population growth as determined in general plans
2 adopted by the counties pursuant to section 226-58.

3 **§201H-B Definitions.** As used in this part:

4 "Affordable housing" means housing that is affordable to
5 households with incomes at or below one hundred forty per cent
6 of the median family income or as may be determined by the
7 United States Department of Housing and Urban Development.

8 "Affordable housing receiving zone" means an area nominated
9 by, and within the jurisdiction of, a county government declared
10 by the corporation to be eligible for the benefits of this part.

11 "Corporation" means the Hawaii housing finance and
12 development corporation.

13 **§201H-C Administration.** The corporation shall administer
14 this part and have the following powers and duties:

15 (1) To establish criteria for counties to use in
16 determining what areas qualify as affordable housing
17 receiving zones; provided that no affordable housing
18 receiving zone shall include any lands designated
19 important agricultural lands or conservation lands.
20 The criteria shall be the minimum required for
21 implementation of an affordable housing receiving
22 zone;

- 1 (2) To monitor the implementation and operation of this
2 part;
- 3 (3) To conduct a continuing evaluation program of
4 affordable housing receiving zones;
- 5 (4) To assist counties in reducing rules within affordable
6 housing receiving zones;
- 7 (5) To submit annual reports evaluating the effectiveness
8 of the program and any recommendations for further
9 legislation;
- 10 (6) To administer and enforce the rules adopted by the
11 corporation; and
- 12 (7) To administer this part in such a manner that the area
13 to be designated as an affordable housing receiving
14 zone will most benefit the area and the State.

15 **§201H-D Affordable housing receiving zone designation.**

16 (a) The governing body of each county shall identify in the
17 form of a written application to the corporation areas that may
18 be declared affordable housing receiving zones. Each
19 application shall include a description of the location of the
20 area or areas in question, and a general statement identifying
21 proposed local incentives to complement the state and any
22 federal incentives.

1 (b) The corporation shall approve the designation of up to
2 twenty areas in each county as affordable housing receiving
3 zones for a period of twenty years. The corporation shall adopt
4 rules setting forth appropriate standards for counties to use in
5 the designation of affordable housing receiving zones. Private
6 landowners may request to the county that their lands be
7 included in such zones.

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

13 (b) The corporation shall complete review of, and either
14 approve or deny, the application within sixty days of the last
15 date designated for receipt of an application. If approving,
16 the corporation shall approve, in writing, those applications
17 that have identified areas that qualify as affordable housing
18 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 ordinances and rules relating to the use, zoning, planning, and
9 development of land and construction in an affordable housing
10 receiving zone. Rules adopted under this section shall follow
11 existing law, rules, and ordinances as closely as is consistent
12 with standards meeting minimum requirements of energy
13 efficiency, health, and safety. The corporation may provide by
14 rule that lands within an affordable housing receiving zone
15 shall not be developed beyond existing uses or that improvements
16 thereon shall not be demolished or substantially reconstructed,
17 or provide other restrictions on the use of the zone.

18 **§201H-G Eligibility; qualified affordable housing project.**

19 (a) Any housing project may be eligible to be designated a
20 qualified affordable housing project for purposes of this part
21 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 or as may be determined by
7 the United States Department of Housing and Urban
8 Development; 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 an affordable
14 housing project prior to the area being designated an affordable
15 housing receiving zone.

16 (c) After designation as an affordable housing receiving
17 zone, each qualified affordable housing project in the zone
18 shall complete and submit to the corporation, on a form supplied
19 by the corporation, the information necessary for the department
20 to determine whether the housing project qualifies as a
21 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) Procurement exemptions;
- 8 (14) Design flexibility;
- 9 (15) Site flexibility;
- 10 (16) Reduction or waiver of public facility set aside and
- 11 fees; public facility requirement flexibility;
- 12 (17) Waiver of state wage requirement; and
- 13 (18) Other public incentives and exemptions proposed in the
- 14 locality's application, which shall be binding upon
- 15 the locality upon designation of the affordable
- 16 housing receiving zone.

17 **§201H-I Termination of an affordable housing receiving**
18 **zone.** Upon designation of an area as an affordable housing
19 receiving zone, the proposals for regulatory flexibility, tax
20 credits, waivers, and other public incentives authorized in this
21 part shall be binding upon the county governing body to the
22 extent and for the period of time specified in the application

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

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

20 "(a) Any law to the contrary notwithstanding, any county
21 shall have and may exercise the same powers, subject to
22 applicable limitations, as those granted the Hawaii housing

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

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

1 moderate-income, other persons of low- and moderate-
2 income, and persons displaced by any governmental
3 action, by making long-term mortgage or interim
4 construction loans available;

5 (4) Contract with any eligible bidders to provide for
6 construction of urgently needed housing for persons of
7 low- and moderate-income;

8 (5) Guarantee the top twenty-five per cent of the
9 principal balance of real property mortgage loans,
10 plus interest thereon, made to qualified borrowers by
11 qualified lenders;

12 (6) Enter into mortgage guarantee agreements with
13 appropriate officials of any agency or instrumentality
14 of the United States to induce those officials to
15 commit to insure or to insure mortgages under the
16 National Housing Act, as amended;

17 (7) Make a direct loan to any qualified buyer for the
18 downpayment required by a private lender to be made by
19 the borrower as a condition of obtaining a loan from
20 the private lender in the purchase of residential
21 property;

22 (8) Provide funds for a share, not to exceed fifty per

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

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

8 [~~(9)~~] (10) Sell or lease completed dwelling units.

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

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

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

18 Further, the county general plans should:

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

1 affordable housing zones, visitor destinations, urban
2 design, and all other matters necessary for the
3 coordinated development of the county and regions
4 within the county; [~~and~~]

5 (2) Contain implementation priorities and actions to carry
6 out policies to include but not be limited to land use
7 maps, programs, projects, regulatory measures,
8 standards and principles, and interagency coordination
9 provisions[~~-~~]; and

10 (3) Contain implementation actions to identify, designate,
11 and establish affordable housing receiving zones
12 pursuant to part of chapter 201H."

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

S.B. NO. 908

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. In codifying the new sections added to chapter
5 201H, Hawaii Revised Statutes, by section 2 of this Act, the
6 revisor of statutes shall substitute appropriate section numbers
7 for the letters used in the designations, and references to,
8 those new sections in this Act.

9 SECTION 8. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 9. This Act shall take effect upon its approval.

12

13

INTRODUCED BY: _____

BY REQUEST

14

Report Title:

Hawaii Affordable Housing Receiving Zones

Description:

Establishes affordable housing receiving zones to encourage the development of affordable housing.

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO AFFORDABLE HOUSING.

PURPOSE: Establishes affordable housing receiving zones to expedite and increase the development of affordable housing.

MEANS: Add a new part to chapter 201H, Hawaii Revised Statutes, and amend sections 46-15.1(a) and 226-58(b), Hawaii Revised Statutes.

JUSTIFICATION: In 2007, Governor Lingle convened the Affordable Housing Regulatory Barriers Task Force in response to the U.S. Department of Housing and Urban Development's National Call to Action. The Task Force's main objective is to identify barriers to affordable housing development in Hawaii and to recommend appropriate solutions.

The Task Force recognizes that regulatory burdens can potentially delay the development of an affordable housing project for up to seven years, which leads to a more expensive home. The Task Force finds that these types of delays can increase the cost of a home or rental unit by \$10,000 to \$50,000.

To address this problem the Task Force recommends that the State authorize the counties to identify and designate affordable housing receiving zones. The zones will have incentives and exemptions that are tailored to encourage and expedite affordable housing development. Counties are encouraged to identify and include the zones in their county general and development plans. The bill also prohibits counties from designating affordable housing

receiving zones on conservation or important agricultural lands.

Impact on the public: This bill creates a mechanism for counties to apply incentives and exemptions to an entire zone that has been designated for affordable housing, as opposed to granting these same incentives and exemptions on a per parcel basis. The public will benefit from increased access to affordable housing units, constructed in these pre-designated areas.

Impact on the department and other agencies: Fee exemptions may impact the amount of funds received by county agencies.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Hawaii Housing and Finance Development Corporation, Department of Education, Counties, Department of Land and Natural Resources, and Board of Water Supply.

EFFECTIVE DATE: Upon approval.