

# S.B. NO. 909

JAN 26 2009

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## A BILL FOR AN ACT

RELATING TO THIRD-PARTY REVIEW OF AFFORDABLE HOUSING PROJECTS.

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

1           SECTION 1. In August 2007, Hawaii accepted an invitation  
2 by the United States Department of Housing and Urban Development  
3 to join the National Call to Action for Affordable Housing  
4 through Regulatory Reform. The Call to Action presented an  
5 opportunity for Hawaii to receive technical assistance from the  
6 federal 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. Although there is a process

1 in place that provides an opportunity to review affordable  
2 housing projects proposals in an expedited manner at the state  
3 and county levels, there is a shortage of staff at the state and  
4 county levels to process project and permit applications in a  
5 timely manner.

6 In 2005 the city and county of Honolulu began to address  
7 their staffing shortage by utilizing third-party reviewers for  
8 electrical and mechanical reviews for the building permit  
9 approval process. The utilization of third-party review can  
10 significantly shorten the review process time from months to  
11 weeks. This in turn helps keep construction costs low and  
12 ensures that homes remain affordable. The purpose of this Act  
13 is to clarify the authority of counties and state agencies to  
14 hire outside parties to handle permits and review approvals and  
15 to limit the liability of outside parties who conduct reviews.

16 SECTION 2. Chapter 103, Hawaii Revised Statutes, is  
17 amended by adding a new section to be appropriately designated  
18 and to read as follows:

19 "§103- State and county contracts for services; civil  
20 service exemption. (a) Notwithstanding any other law to the  
21 contrary, services that are customarily and historically  
22 provided by civil servants may be obtained through state or

1 county contracts for services with private entities for any  
2 reviews related to affordable housing projects, including but  
3 not limited to permit applications, inspections, discretionary  
4 permits, and ministerial permits, provided that:

5 (1) The service provided in a contract authorized by this  
6 section is for an affordable housing development as  
7 defined by the counties or for housing projects that  
8 qualify for affordable housing development pursuant to  
9 chapter 201H; and

10 (2) The estimated time necessary for civil servants to  
11 complete the service is longer than forty-five days  
12 from the time that the project or permit application,  
13 or applicable request was submitted to the State or a  
14 county.

15 (b) Services obtained through contracts authorized by this  
16 section shall not be subject to, and shall be exempt from, the  
17 requirements of chapters 46 and 76.

18 (c) This section does not limit the authority of the State  
19 or a county to ensure that the project and permit reviews for  
20 the buildings, structures, and facilities within an affordable  
21 housing development comply with state and county building codes

1 or to limit the authority and responsibility of the fire  
2 official to conduct safety inspections under chapter 132.

3 (d) Private entities providing services to the State or a  
4 county through contracts authorized by this section shall be  
5 immune from liability, except for liability arising out of the  
6 intentional misconduct, gross negligence, or malfeasance of the  
7 private entity."

8 SECTION 3. Section 46-33, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§46-33 Exemption of certain county positions.** In any  
11 county with a population of 500,000 or more, the civil service  
12 to which this section refers is comprised of all positions in  
13 the public service of such county, now existing or hereafter  
14 established, and embraces all personal services performed for  
15 such county, except the following:

16 (1) Positions of officers elected by public vote;  
17 positions of heads of departments; position of the  
18 clerk; position of the manager of the board of water  
19 supply and position of the chief of police[-];

20 (2) Positions in the office of mayor, but such positions,  
21 except those of the heads of the offices of  
22 information and complaint and budget director, shall

1 be included in the position classification plan.

2 Employees of the municipal library and of the offices  
3 of information and complaint and budget director,  
4 other than the head of such offices, however, shall  
5 not be exempted from civil service[-];

6 (3) Positions of deputies of the corporation counsel,  
7 deputies of the prosecuting attorney, and law  
8 clerks[-];

9 (4) Positions of members of any board, commission, or  
10 equivalent body[-];

11 (5) Positions filled by inmates, patients, or students in  
12 city institutions or in the schools[-];

13 (6) Positions of district magistrates, jurors, and  
14 witnesses[-];

15 (7) Personal services obtained by contract where the  
16 director of civil service has certified that the  
17 service is special or unique, is essential to the  
18 public interest and that, because of circumstances  
19 surrounding its fulfillment, personnel to perform such  
20 service cannot be obtained through normal civil  
21 service recruitment procedures. Any such contract may  
22 be for any period not exceeding one year[-];

- 1           (8) Personal services of a temporary nature needed in the  
2           public interest where the need for the same does not  
3           exceed ninety days, but before any person may be  
4           employed to render such temporary service the director  
5           of civil service shall certify that the service is of  
6           a temporary nature and that recruitment through normal  
7           civil service recruitment procedures is not  
8           practicable. The employment of any person for service  
9           of a temporary nature may be extended for good cause  
10          for an additional period not to exceed ninety days  
11          upon similar certification by the director subject to  
12          approval of the civil service commission[-];
- 13          (9) Personal services performed on a fee, contract, or  
14          piecework basis by persons who may lawfully perform  
15          their duties concurrently with their private business  
16          or profession or other private employment, if any, and  
17          whose duties require only a portion of their time,  
18          where it is impracticable to ascertain or anticipate  
19          the portion of time devoted to the service of the city  
20          and such fact is certified to by the director of civil  
21          service[-];

1 (10) Positions of temporary election clerks in the office  
2 of the clerk employed during the election periods, but  
3 the positions filled by such employees shall be  
4 included in the position classification plan[-];

5 (11) Positions of one first deputy and private secretaries  
6 to heads of departments and their first deputies, but  
7 private secretarial positions shall be included in the  
8 position classification plan. The first deputy in the  
9 department of civil service, however, shall not be  
10 exempt from civil service[-]; and

11 (12) Personal services that are obtained through a contract  
12 or agreement for a grant, subsidy, or purchase of  
13 service made pursuant to chapter 42F, 103D, 103F, 103-  
14 , or 201H.

15 The director of civil service shall determine the applicability  
16 of this section to specific positions."

17 SECTION 4. Section 76-16, Hawaii Revised Statutes, is  
18 amended by amending subsection (b) to read as follows:

19 "(b) The civil service to which this chapter applies shall  
20 comprise all positions in the State now existing or hereafter  
21 established and embrace all personal services performed for the  
22 State, except the following:

- 1           (1) Commissioned and enlisted personnel of the Hawaii  
2           national guard as such, and positions in the Hawaii  
3           national guard that are required by state or federal  
4           laws or regulations or orders of the national guard to  
5           be filled from those commissioned or enlisted  
6           personnel;
- 7           (2) Positions filled by persons employed by contract where  
8           the director of human resources development has  
9           certified that the service is special or unique or is  
10          essential to the public interest and that, because of  
11          circumstances surrounding its fulfillment, personnel  
12          to perform the service cannot be obtained through  
13          normal civil service recruitment procedures. Any such  
14          contract may be for any period not exceeding one year;
- 15          (3) Positions that must be filled without delay to comply  
16          with a court order or decree if the director  
17          determines that recruitment through normal recruitment  
18          civil service procedures would result in delay or  
19          noncompliance, such as the Felix-Cayetano consent  
20          decree;
- 21          (4) Positions filled by the legislature or by either house  
22          or any committee thereof;



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- 1 (5) Employees in the office of the governor and office of  
2 the lieutenant governor, and household employees at  
3 Washington Place;
- 4 (6) Positions filled by popular vote;
- 5 (7) Department heads, officers, and members of any board,  
6 commission, or other state agency whose appointments  
7 are made by the governor or are required by law to be  
8 confirmed by the senate;
- 9 (8) Judges, referees, receivers, masters, jurors, notaries  
10 public, land court examiners, court commissioners, and  
11 attorneys appointed by a state court for a special  
12 temporary service;
- 13 (9) One bailiff for the chief justice of the supreme court  
14 who shall have the powers and duties of a court  
15 officer and bailiff under section 606-14; one  
16 secretary or clerk for each justice of the supreme  
17 court, each judge of the intermediate appellate court,  
18 and each judge of the circuit court; one secretary for  
19 the judicial council; one deputy administrative  
20 director of the courts; three law clerks for the chief  
21 justice of the supreme court, two law clerks for each  
22 associate justice of the supreme court and each judge

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1 of the intermediate appellate court, one law clerk for  
2 each judge of the circuit court, two additional law  
3 clerks for the civil administrative judge of the  
4 circuit court of the first circuit, two additional law  
5 clerks for the criminal administrative judge of the  
6 circuit court of the first circuit, one additional law  
7 clerk for the senior judge of the family court of the  
8 first circuit, two additional law clerks for the civil  
9 motions judge of the circuit court of the first  
10 circuit, two additional law clerks for the criminal  
11 motions judge of the circuit court of the first  
12 circuit, and two law clerks for the administrative  
13 judge of the district court of the first circuit; and  
14 one private secretary for the administrative director  
15 of the courts, the deputy administrative director of  
16 the courts, each department head, each deputy or first  
17 assistant, and each additional deputy, or assistant  
18 deputy, or assistant defined in paragraph (16);

19 (10) First deputy and deputy attorneys general, the  
20 administrative services manager of the department of  
21 the attorney general, one secretary for the  
22 administrative services manager, an administrator and

1 any support staff for the criminal and juvenile  
2 justice resources coordination functions, and law  
3 clerks;

4 (11) (A) Teachers, principals, vice-principals, complex  
5 area superintendents, deputy and assistant  
6 superintendents, other certificated personnel,  
7 not more than twenty noncertificated  
8 administrative, professional, and technical  
9 personnel not engaged in instructional work;

10 (B) Effective July 1, 2003, teaching assistants,  
11 educational assistants, bilingual/bicultural  
12 school-home assistants, school psychologists,  
13 psychological examiners, speech pathologists,  
14 athletic health care trainers, alternative school  
15 work study assistants, alternative school  
16 educational/supportive services specialists,  
17 alternative school project coordinators, and  
18 communications aides in the department of  
19 education;

20 (C) The special assistant to the state librarian and  
21 one secretary for the special assistant to the  
22 state librarian; and

1 (D) Members of the faculty of the University of  
2 Hawaii, including research workers, extension  
3 agents, personnel engaged in instructional work,  
4 and administrative, professional, and technical  
5 personnel of the university;

6 (12) Employees engaged in special, research, or  
7 demonstration projects approved by the governor;

8 (13) Positions filled by inmates, kokuas, patients of state  
9 institutions, persons with severe physical or mental  
10 handicaps participating in the work experience  
11 training programs, and students and positions filled  
12 through federally funded programs that provide  
13 temporary public service employment such as the  
14 federal Comprehensive Employment and Training Act of  
15 1973;

16 (14) A custodian or guide at Iolani Palace, the Royal  
17 Mausoleum, and Hulihee Palace;

18 (15) Positions filled by persons employed on a fee,  
19 contract, or piecework basis, who may lawfully perform  
20 their duties concurrently with their private business  
21 or profession or other private employment and whose  
22 duties require only a portion of their time, if it is

1           impracticable to ascertain or anticipate the portion  
2           of time to be devoted to the service of the State;  
3       (16) Positions of first deputies or first assistants of  
4           each department head appointed under or in the manner  
5           provided in section 6, Article V, of the State  
6           Constitution; three additional deputies or assistants  
7           either in charge of the highways, harbors, and  
8           airports divisions or other functions within the  
9           department of transportation as may be assigned by the  
10          director of transportation, with the approval of the  
11          governor; four additional deputies in the department  
12          of health, each in charge of one of the following:  
13          behavioral health, environmental health, hospitals,  
14          and health resources administration, including other  
15          functions within the department as may be assigned by  
16          the director of health, with the approval of the  
17          governor; an administrative assistant to the state  
18          librarian; and an administrative assistant to the  
19          superintendent of education;  
20       (17) Positions specifically exempted from this part by any  
21          other law; provided that all of the positions defined

1 by paragraph (9) shall be included in the position  
2 classification plan;

3 (18) Positions in the state foster grandparent program and  
4 positions for temporary employment of senior citizens  
5 in occupations in which there is a severe personnel  
6 shortage or in special projects;

7 (19) Household employees at the official residence of the  
8 president of the University of Hawaii;

9 (20) Employees in the department of education engaged in  
10 the supervision of students during meal periods in the  
11 distribution, collection, and counting of meal  
12 tickets, and in the cleaning of classrooms after  
13 school hours on a less than half-time basis;

14 (21) Employees hired under the tenant hire program of the  
15 Hawaii public housing authority; provided that not  
16 more than twenty-six per cent of the authority's work  
17 force in any housing project maintained or operated by  
18 the authority shall be hired under the tenant hire  
19 program;

20 (22) Positions of the federally funded expanded food and  
21 nutrition program of the University of Hawaii that

1           require the hiring of nutrition program assistants who  
2           live in the areas they serve;

3           (23) Positions filled by severely handicapped persons who  
4           are certified by the state vocational rehabilitation  
5           office that they are able to perform safely the duties  
6           of the positions;

7           (24) One public high school student to be selected by the  
8           Hawaii state student council as a nonvoting member on  
9           the board of education as authorized by the State  
10          Constitution;

11          (25) Sheriff, first deputy sheriff, and second deputy  
12          sheriff;

13          (26) A gender and other fairness coordinator hired by the  
14          judiciary; ~~and~~

15          (27) Positions in the Hawaii national guard youth challenge  
16          academy[-]; and

17          (28) Personal services that are obtained through a contract  
18          or agreement for a grant, subsidy, or purchase of  
19          service made pursuant to chapter 42F, 103D, 103F, 103-  
20          , or 201H.

21          The director shall determine the applicability of this  
22          section to specific positions. Nothing in this section shall be

1 deemed to affect the civil service status of any incumbent as it  
2 existed on July 1, 1955."

3 SECTION 5. Section 76-77, Hawaii Revised Statutes is  
4 amended to read as follows:

5 "**§76-77 Civil service and exemptions.** The civil service to  
6 which this part applies comprises all positions in the public  
7 service of each county, now existing or hereafter established,  
8 and embraces all personal services performed for each county,  
9 except the following:

- 10 (1) Positions in the office of the mayor; provided that  
11 the positions shall be included in the classification  
12 systems;
- 13 (2) Positions of officers elected by public vote,  
14 positions of heads of departments, and positions of  
15 one first deputy or first assistant of heads of  
16 departments;
- 17 (3) Positions of deputy county attorneys, deputy  
18 corporation counsel, deputy prosecuting attorneys, and  
19 law clerks;
- 20 (4) Positions of members of any board, commission, or  
21 agency;



- 1           (5) Positions filled by students; positions filled through  
2           federally funded programs which provide temporary  
3           public service employment such as the federal  
4           Comprehensive Employment and Training Act of 1973; and  
5           employees engaged in special research or demonstration  
6           projects approved by the mayor, for which projects  
7           federal funds are available;
- 8           (6) Positions of district judges, jurors, and witnesses;
- 9           (7) Positions filled by persons employed by contract where  
10          the personnel director has certified that the service  
11          is special or unique, is essential to the public  
12          interest, and that because of the circumstances  
13          surrounding its fulfillment, personnel to perform the  
14          service cannot be recruited through normal civil  
15          service procedures; provided that no contract pursuant  
16          to this paragraph shall be for any period exceeding  
17          one year;
- 18          (8) Positions of a temporary nature needed in the public  
19          interest where the need does not exceed ninety days;  
20          provided that before any person may be employed to  
21          render temporary service pursuant to this paragraph,  
22          the director shall certify that the service is of a

1 temporary nature and that recruitment through normal  
2 civil service recruitment procedures is not  
3 practicable; and provided further that the employment  
4 of any person pursuant to this paragraph may be  
5 extended for good cause for an additional period not  
6 to exceed ninety days upon similar certification by  
7 the director;

8 (9) Positions of temporary election clerks in the office  
9 of the county clerk employed during election periods;

10 (10) Positions specifically exempted from this part by any  
11 other state statutes;

12 (11) Positions of one private secretary for each department  
13 head; provided that the positions shall be included in  
14 the classification systems;

15 (12) Positions filled by persons employed on a fee,  
16 contract, or piecework basis who may lawfully perform  
17 their duties concurrently with their private business  
18 or profession or other private employment, if any, and  
19 whose duties require only a portion of their time,  
20 where it is impracticable to ascertain or anticipate  
21 the portion of time devoted to the service of the  
22 county and that fact is certified by the director;

1           (13) Positions filled by persons with a severe disability  
2                    who are certified by the state vocational  
3                    rehabilitation office as able to safely perform the  
4                    duties of the positions;

5           (14) Positions of the housing and community development  
6                    office or department of each county; provided that  
7                    this exemption shall not preclude each county from  
8                    establishing these positions as civil service  
9                    positions;

10          (15) The following positions in the office of the  
11                    prosecuting attorney: private secretary to the  
12                    prosecuting attorney, secretary to the first deputy  
13                    prosecuting attorney, and administrative or executive  
14                    assistants to the prosecuting attorney; provided that  
15                    the positions shall be included in the classification  
16                    systems; [~~and~~]

17          (16) Positions or contracts for personal services with  
18                    private persons or entities for services lasting no  
19                    more than one year and at a cost of no more that  
20                    \$750,000; provided that the exemption under this  
21                    contract shall apply to contracts for building,  
22                    custodial, and grounds maintenance services with

1 qualified community rehabilitation programs, as  
2 defined in section 103D-1001, lasting for no more than  
3 a year and at a cost of no more than \$850,000 [-] and  
4 (17) Personal services that are obtained through a contract  
5 or agreement for a grant, subsidy, or purchase of  
6 service made pursuant to chapter 42F, 103D, 103F, 103-  
7 , or 201H.

8 The director shall determine the applicability of this  
9 section to specific positions and shall determine whether or not  
10 positions exempted by paragraphs (7) and (8) shall be included  
11 in the classification systems.

12 Nothing in this section shall be deemed to affect the civil  
13 service status of any incumbent private secretary of a  
14 department head who held that position on May 7, 1977."

15 SECTION 6. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 7. In codifying the new section added to chapter  
18 103, Hawaii Revised Statutes, the revisor of statutes shall  
19 substitute appropriate part numbers and section numbers for the  
20 letters used in the new sections designated in this Act.

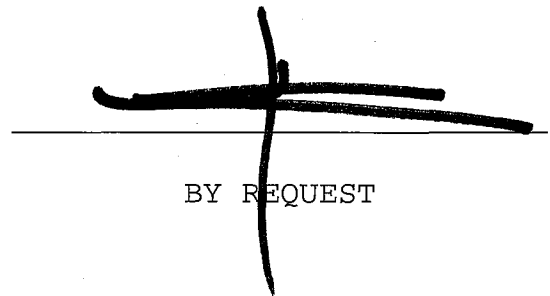
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1 SECTION 8. This Act shall take effect upon its approval.

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3

INTRODUCED BY:



4

BY REQUEST

**Report Title:**

Affordable Housing; Third-Party Review

**Description:**

Allows state and county agencies to utilize third-party review to facilitate the processing and issuance of building permits on a timely basis for affordable housing projects, including the performance of inspections.

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT RELATING TO THIRD-PARTY REVIEW OF AFFORDABLE HOUSING PROJECTS.

PURPOSE: The purpose of this bill is to support the development of affordable housing by facilitating the permitting and review process at the state and county levels through the use of third-party reviewers.

MEANS: Add a new section to chapter 103, Hawaii Revised Statutes, and amend sections 46-33, 76-16, and 76-77 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 regulatory barriers to affordable housing development in Hawaii and to recommend appropriate solutions.

The Task Force discovered that there is a shortage of workers at state and county agencies to review project and permitting applications for affordable housing developments. Even though there is a process in place that provides an opportunity to review affordable housing project proposals in an expedited manner, the staffing shortages still create significant delays.

Accordingly, this bill clarifies that state and county departments and agencies have the authority to contract with private agencies to conduct reviews of project and permit applications when there is a legitimate need for staffing assistance.

Impact on the public: An expedited review process will quicken the delivery of

affordable housing and ensure that home prices are kept as low as possible.

Impact on the department and other agencies:  
Remedies staffing shortages at state and county agencies conducting affordable housing development permitting reviews.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Hawaii Housing Finance and Development Corporation, Department of Health, Department of Land and Natural Resources, Department of Transportation, and county agencies.

EFFECTIVE DATE: Upon approval.