

JAN 23 2009

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.

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

17 "PART . AFFORDABLE HOUSING RECEIVING ZONES

18 §201H-A Purpose. The purpose of this part is to encourage
19 the development of affordable housing in the State by providing
20 for the establishment of affordable housing receiving zones.

21 The counties are best equipped to determine where affordable
22 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 chapter:

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 as determined by the United States
7 Department of Housing and Urban Development, or such other
8 figure as authorized by the appropriate approving local
9 authority.

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

14 "Corporation" means the Hawaii housing finance and
15 development corporation.

16 **§201H-C Administration.** The corporation shall administer
17 this part and shall have the following powers and duties, to:

- 18 (1) Establish criteria for determining what areas qualify
19 as affordable housing receiving zones; provided that
20 no affordable housing receiving zone shall include any
21 lands designated important agricultural lands or
22 conservation lands; provided further that the criteria



- 1 shall be the minimum required for implementation of
2 the purpose of this part;
- 3 (2) Monitor the implementation and operation of this part;
- 4 (3) Conduct a continuing evaluation program of affordable
5 housing receiving zones;
- 6 (4) Assist counties in obtaining the reduction of rules
7 within affordable housing receiving zones;
- 8 (5) Submit annual reports evaluating the effectiveness of
9 the program and any recommendations for legislation to
10 the legislature and the governor;
- 11 (6) Administer and enforce the rules adopted by the
12 corporation; and
- 13 (7) Administer this part in such a manner that the area to
14 be designated as an affordable housing receiving zone
15 will most benefit the area and the State.

16 **§201H-D Affordable housing receiving zone designation.**

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



1 proposed local incentives to complement state and federal
2 incentives, if any.

3 (b) The corporation shall approve the designation of up to
4 twenty areas in each county as affordable housing receiving
5 zones for a period of twenty years. The corporation shall adopt
6 rules setting forth appropriate standards for the designation of
7 affordable housing receiving zones. Private landowners may
8 request that their lands be included in the zones in the form of
9 an overlay zone such that they lose no other previous or future
10 authorized land use zonings and may later negotiate with
11 developers for sufficient consideration to effectuate affordable
12 housing being provided on their lands.

13 §201H-E Application review. (a) The corporation shall
14 review each application upon receipt and shall secure any
15 additional information that the corporation deems necessary for
16 the purpose of determining whether the area or areas described
17 qualify as affordable housing receiving zones.

18 (b) The corporation shall complete its review of the
19 application within sixty days of the last date designated for
20 receipt of an application. After review of an application, the
21 corporation shall approve, in writing, those applications that
22 have provided at least ten areas that qualify as affordable



1 housing receiving zones; provided that the number of allowable
2 affordable housing receiving zones for the county as established
3 under section 201H-D(b), is not exceeded. If an application is
4 denied, the corporation shall inform the governing body in
5 writing of that fact together with the reasons for the denial.
6 Upon denial, the county shall resubmit the application with the
7 changes or modifications necessary until the application is
8 approved.

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



1 substantially reconstructed, or provide other restrictions on
2 the use of the zone.

3 §201H-G Eligibility; qualified affordable housing project.

4 (a) Any housing project may be eligible to be designated a
5 qualified affordable housing project for purposes of this part
6 if:

7 (1) The housing project is established within an
8 affordable housing receiving zone;

9 (2) No less than twenty per cent of the units in the
10 housing project are affordable to households with
11 incomes at or below one hundred forty per cent of the
12 area median family income as determined by the United
13 States Department of Housing and Urban Development;
14 and

15 (3) The housing project consists of at least fifteen
16 units.

17 (b) A housing project also may be eligible to be
18 designated a qualified affordable housing project for purposes
19 of this part if the housing project qualified as a qualified
20 affordable housing project in an area prior to an area being
21 designated an affordable housing receiving zone.



1 (c) After designation as an affordable housing receiving
2 zone, each qualified affordable housing project in the zone
3 shall annually complete and submit to the corporation, on a form
4 supplied by the corporation, the information necessary for the
5 department to determine whether the housing project qualifies as
6 a qualified affordable housing project. If the corporation
7 determines that the housing project qualifies as a qualified
8 affordable housing project, then the corporation shall approve
9 the completed form and forward copies of the completed and
10 approved form to the governing body of the county.

11 (d) A completed form approved by the corporation, referred
12 to in subsection (c), shall be prima facie evidence of the
13 eligibility of a housing project for the purposes of this
14 section.

15 **§201H-H Local incentives, waivers, and regulatory**
16 **flexibility.** (a) In applying for designation as an affordable
17 housing receiving zone, the applying county shall propose in its
18 application local incentives, which may include, but not be
19 limited to:

- 20 (1) Reduction or waiver of permit fees;
- 21 (2) Reduction or waiver of user fees;
- 22 (3) Reduction or waiver of impact fees;



- 1 (4) Reduction or waiver of water and sewer connection
- 2 fees;
- 3 (5) Reduction or waiver of parking requirements;
- 4 (6) Reduction of real property taxes;
- 5 (7) Priority permit review;
- 6 (8) Priority financing, construction, and dedication of
- 7 infrastructure;
- 8 (9) Density bonuses;
- 9 (10) Height waivers;
- 10 (11) Cluster zoning;
- 11 (12) Exemption from environmental impact reviews for any
- 12 affordable housing project on property that has
- 13 already been zoned for development;
- 14 (13) Procurement exemptions;
- 15 (14) Design flexibility;
- 16 (15) Site flexibility;
- 17 (16) Reduction or waiver of public facility set aside and
- 18 fees;
- 19 (17) Public facility requirement flexibility;
- 20 (18) Waiver of state wage requirement; and
- 21 (19) Other public incentives and exemptions proposed in the
- 22 locality's application, which shall be binding upon



1 the locality upon designation of the affordable
2 housing receiving zone.

3 §201H-I Termination of an affordable housing receiving
4 zone. Upon designation of an area as an affordable housing
5 receiving zone, the proposals for regulatory flexibility, tax
6 credits, waivers, and other public incentives authorized in this
7 part shall be binding upon the county governing body to the
8 extent and for the period of time specified in the application
9 for zone designation. If the county governing body is unable or
10 unwilling to provide any of the incentives set forth in section
11 201H-H or other incentives acceptable to the corporation, and
12 the corporation has not adopted rules pursuant to section 201H-F
13 that supersede inconsistent ordinances and rules relating to the
14 use, zoning, planning, and development of land and construction
15 in an affordable housing receiving zone, then the affordable
16 housing receiving zone shall terminate. Qualified affordable
17 housing projects located in the affordable housing receiving
18 zone shall be eligible to receive the incentives and waivers
19 provided by this part even though the zone designation has
20 terminated. No housing project may become qualified after the
21 date of zone termination. The county governing body may amend
22 an application submitted pursuant to section 201H-D with the



1 approval of the corporation; provided that the county governing
2 body proposes an incentive equal to or superior to the unamended
3 application."

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

6 "(a) Any law to the contrary notwithstanding, any county
7 shall have and may exercise the same powers, subject to
8 applicable limitations, as those granted the Hawaii housing
9 finance and development corporation pursuant to chapter 201H
10 insofar as those powers may be reasonably construed to be
11 exercisable by a county for the purpose of developing,
12 constructing, and providing low- and moderate-income housing;
13 provided that no county shall be empowered to cause the State to
14 issue general obligation bonds to finance a project pursuant to
15 this section; provided further that county projects shall be
16 granted an exemption from general excise or receipts taxes in
17 the same manner as projects of the Hawaii housing finance and
18 development corporation pursuant to section 201H-36; and
19 provided further that section 201H-16 shall not apply to this
20 section unless federal guidelines specifically provide local
21 governments with that authorization and the authorization does



1 not conflict with any state laws. The powers shall include the
2 power, subject to applicable limitations, to:

3 (1) Develop and construct dwelling units, alone or in
4 partnership with developers;

5 (2) Acquire necessary land by lease, purchase, exchange,
6 or eminent domain;

7 (3) Provide assistance and aid to a public agency or other
8 person in developing and constructing new housing and
9 rehabilitating existing housing for elders of low- and
10 moderate-income, other persons of low- and moderate-
11 income, and persons displaced by any governmental
12 action, by making long-term mortgage or interim
13 construction loans available;

14 (4) Contract with any eligible bidders to provide for
15 construction of urgently needed housing for persons of
16 low- and moderate-income;

17 (5) Guarantee the top twenty-five per cent of the
18 principal balance of real property mortgage loans,
19 plus interest thereon, made to qualified borrowers by
20 qualified lenders;

21 (6) Enter into mortgage guarantee agreements with
22 appropriate officials of any agency or instrumentality



1 of the United States to induce those officials to
2 commit to insure or to insure mortgages under the
3 National Housing Act, as amended;

4 (7) Make a direct loan to any qualified buyer for the
5 downpayment required by a private lender to be made by
6 the borrower as a condition of obtaining a loan from
7 the private lender in the purchase of residential
8 property;

9 (8) Provide funds for a share, not to exceed fifty per
10 cent, of the principal amount of a loan made to a
11 qualified borrower by a private lender who is unable
12 otherwise to lend the borrower sufficient funds at
13 reasonable rates in the purchase of residential
14 property; [and]

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

17 [~~9~~] (10) Sell or lease completed dwelling units.

18 For purposes of this section, a limitation is applicable to
19 the extent that it may reasonably be construed to apply to a
20 county."

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



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

5 Further, the county general plans should:

6 (1) Contain objectives to be achieved and policies to be
7 pursued with respect to population density, land use,
8 transportation system location, public and community
9 facility locations, water and sewage system locations,
10 affordable housing zones, visitor destinations, urban
11 design, and all other matters necessary for the
12 coordinated development of the county and regions
13 within the county; [~~and~~]

14 (2) Contain implementation priorities and actions to carry
15 out policies to include but not be limited to land use
16 maps, programs, projects, regulatory measures,
17 standards and principles, and interagency coordination
18 provisions[-]; and

19 (3) Contain implementation actions to identify, designate,
20 and establish affordable housing receiving zones
21 pursuant to part _____ of chapter 201H."



1 SECTION 5. It is the intent of this Act not to jeopardize
2 the receipt of any federal aid nor to impair the obligation of
3 the State or any agency thereof to the holders of any bond
4 issued by the State or by any such agency, and to the extent,
5 and only to the extent, necessary to effectuate this intent, the
6 governor may modify the strict provisions of this Act, but shall
7 promptly report any such modification with reasons therefore to
8 the legislature at its next session thereafter for review by the
9 legislature.

10 SECTION 6. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun, before its effective date.

13 SECTION 7. If any provision of this Act, or the
14 application thereof to any person or circumstance is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act, which can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 8. In codifying the new sections added by
20 section 2 of this Act, the revisor of statutes shall substitute
21 appropriate section numbers for the letters used in designating
22 the new sections in this Act.



1 SECTION 9. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 10. This Act shall take effect upon its approval.
4

INTRODUCED BY: Norman Sobers
Muzanne Chun Lalani
Michelle N. Sidani
[Signature]



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.

