
A BILL FOR AN ACT

RELATING TO 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 States 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. Hawaii's participation is
10 particularly important, given that the State has some of the
11 highest home prices and rental rates in the United States.

12 The legislature further finds that current economic factors
13 have had a chilling effect on the development of new affordable
14 housing in Hawaii. As a result, both government and the private
15 sector have responded by proposing a wide range of incentives
16 and initiatives designed to address affordable housing shortages
17 statewide.

1 In addition, the legislature finds that the city and county
2 of Honolulu's mass transit project offers unprecedented
3 opportunities to expand affordable housing options in
4 conjunction with development and redevelopment projects near the
5 transit corridor.

6 The purpose of this Act is to develop a range of affordable
7 housing initiatives by:

- 8 (1) Establishing an expedited review process for mixed-use
9 housing projects and the infrastructure projects
10 associated with housing and mixed-use housing
11 projects;
- 12 (2) Requiring the counties to identify and designate
13 affordable housing receiving zones to facilitate the
14 development of affordable housing, particularly in
15 transit oriented zones; and
- 16 (3) Identifying public lands within one-half mile of
17 Honolulu's transit corridor and within a one-mile
18 radius of any designated transit station, which are
19 suitable for affordable housing.

20 **PART I**

21 SECTION 2. The purpose of this part is to implement the
22 legislative recommendations of the statewide affordable housing

1 task force by authorizing mixed-use housing projects and
2 infrastructure projects that are associated with a housing or
3 mixed-use housing project to be eligible for the expedited
4 review process currently offered to qualifying housing projects.

5 SECTION 3. Section 201H-1, Hawaii Revised Statutes, is
6 amended by adding two new definitions to be appropriately
7 inserted and to read as follows:

8 "Infrastructure" means any facility, public work, or
9 utility installed or improved by the government for the
10 functioning of a community, or private or government-owned
11 facility.

12 "Mixed-use housing" means the combination of different
13 types of structures in a housing project including commercial,
14 public facilities, industrial, and residential, which may
15 include single-family, multi-family, for sale, lease, rental,
16 low, moderate, workforce, affordable, and market housing, or
17 combinations of some or all of the above; provided that at least
18 twenty per cent of the housing units shall be for individuals
19 and families that meet the affordable income threshold under
20 section 201H-202(e)(2)."

21 SECTION 4. Section 201H-38, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:

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1 "(a) The corporation may develop on behalf of the State or
2 with an eligible developer, or may assist under a government
3 assistance program in the development of [7] housing projects,
4 mixed-use housing projects, or infrastructure projects
5 associated with a housing or mixed-use housing project, that
6 shall be exempt from all statutes, ordinances, charter
7 provisions, and rules of any government agency relating to
8 planning, zoning, construction standards for subdivisions,
9 development and improvement of land, and the construction of
10 dwelling units thereon; provided that:

11 (1) The corporation finds the housing project, mixed-use
12 housing project, or infrastructure project associated
13 with a housing or mixed-use housing project is
14 consistent with the purpose and intent of this
15 chapter, and meets minimum requirements of health and
16 safety;

17 (2) The development of the proposed housing project,
18 mixed-use housing project, or infrastructure project
19 associated with a housing or mixed-use housing project
20 does not contravene any safety standards, tariffs, or
21 rates and fees approved by the public utilities

1 commission for public utilities or of the various
2 boards of water supply authorized under chapter 54;

3 (3) The legislative body of the county in which the
4 housing project, mixed-use housing project, or
5 infrastructure project associated with a housing or
6 mixed-use housing project is to be situated shall have
7 approved the project with or without modifications:

8 (A) The legislative body shall approve, approve with
9 modification, or disapprove the project by
10 resolution within forty-five days after the
11 corporation has submitted the preliminary plans
12 and specifications for the project to the
13 legislative body~~[-]~~; provided that for a
14 mixed-use housing project, or infrastructure
15 project associated with a housing or mixed-use
16 housing project, the legislative body shall
17 approve, approve with modification, or disapprove
18 the project by resolution within ninety days
19 after the corporation has submitted the
20 preliminary plans and specifications for the
21 project to the legislative body. If on the
22 forty-sixth day, or the ninety-first day for a

1 mixed-use housing project, or infrastructure
2 project associated with a housing or mixed-use
3 housing project, a project is not disapproved, it
4 shall be deemed approved by the legislative body;

5 (B) No action shall be prosecuted or maintained
6 against any county, its officials, or employees
7 on account of actions taken by them in reviewing,
8 approving, modifying, or disapproving the plans
9 and specifications; and

10 (C) The final plans and specifications for the
11 project shall be deemed approved by the
12 legislative body if the final plans and
13 specifications do not substantially deviate from
14 the preliminary plans and specifications. The
15 final plans and specifications for the project
16 shall constitute the zoning, building,
17 construction, and subdivision standards for that
18 project. For purposes of sections 501-85 and
19 502-17, the executive director of the corporation
20 or the responsible county official may certify
21 maps and plans of lands connected with the
22 project as having complied with applicable laws

1 and ordinances relating to consolidation and
 2 subdivision of lands, and the maps and plans
 3 shall be accepted for registration or recordation
 4 by the land court and registrar; and

5 (4) The land use commission shall approve, approve with
 6 modification, or disapprove a boundary change within
 7 forty-five days after the corporation has submitted a
 8 petition to the commission as provided in section
 9 205-4. If, on the forty-sixth day, the petition is
 10 not disapproved, it shall be deemed approved by the
 11 commission."

PART II

13 SECTION 5. The purpose of this part is to implement the
 14 legislative recommendations of the statewide affordable housing
 15 task force by requiring the counties to identify and designate
 16 affordable housing receiving zones to facilitate the development
 17 of affordable housing, particularly in transit oriented
 18 developments.

19 SECTION 6. Chapter 201H, Hawaii Revised Statutes, is
 20 amended by adding a new part to be appropriately designated and
 21 to read as follows:

"PART . AFFORDABLE HOUSING RECEIVING ZONES

1 **§201H-A Purpose.** The purpose of this part is to encourage
2 the development of affordable housing in transit oriented
3 developments in the State by providing for the establishment of
4 affordable housing receiving zones. The counties are best
5 equipped to determine where affordable housing developments
6 should be located within geographic areas designated for
7 population growth as determined in general plans adopted by the
8 counties pursuant to section 226-58.

9 **§201H-B Definitions.** As used in this part:

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

16 "Affordable housing receiving zone" means an area nominated
17 by, and within the jurisdiction of, a county government, and
18 subsequently declared by the corporation to be eligible for the
19 benefits of this part.

20 "Commission on transit oriented development" means the
21 commission established pursuant to section 6 of S.B. No. 442,
22 whose purpose is to provide oversight and ensure collaboration

1 among transportation, housing, the environment, economic
2 development, and other stakeholders in transit oriented
3 development.

4 "Corporation" means the Hawaii housing finance and
5 development corporation.

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

9 **§201H-C Administration.** The corporation shall administer
10 this part and shall have the following powers and duties, to:

11 (1) In consultation with the commission on transit
12 oriented development, establish criteria for
13 determining what areas qualify as affordable housing
14 receiving zones; provided that no affordable housing
15 receiving zone shall include any lands designated
16 important agricultural lands or conservation lands;
17 provided further that the criteria shall be the
18 minimum required for implementation of the purpose of
19 this part;

20 (2) Monitor the implementation and operation of this part;

21 (3) Conduct a continuing evaluation program of affordable
22 housing receiving zones;

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

11 **§201H-D Affordable housing receiving zone designation.**

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

19 (b) The corporation shall approve the designation of up to
20 twenty areas in each county as affordable housing receiving
21 zones for a period of twenty years. The corporation shall adopt
22 rules setting forth appropriate standards for the designation of

1 affordable housing receiving zones. Private landowners may
2 request that their lands be included in the zones in the form of
3 an overlay zone such that they lose no other previous or future
4 authorized land use zonings and may later negotiate with
5 developers for sufficient consideration to effectuate affordable
6 housing being provided on their lands.

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

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

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

1 denied, the corporation shall inform the governing body in
2 writing of that fact together with the reasons for the denial.
3 Upon denial, the county shall resubmit the application with the
4 changes or modifications necessary until the application is
5 approved.

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

21 **§201H-G Eligibility; qualified affordable housing project.**

22 (a) Any housing project may be eligible to be designated a

1 qualified affordable housing project for purposes of this part
2 if:

3 (1) The housing project is established within an
4 affordable housing receiving zone;

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

10 and

11 (3) The housing project consists of at least fifteen
12 units.

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

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

1 a qualified affordable housing project. If the corporation
2 determines that the housing project qualifies as a qualified
3 affordable housing project, then the corporation shall approve
4 the completed form and forward copies of the completed and
5 approved form to the governing body of the county.

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

10 **§201H-H Local incentives, waivers, and regulatory**

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

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

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

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

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

19 SECTION 7. Section 46-15.1, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) Any law to the contrary notwithstanding, any county
22 shall have and may exercise the same powers, subject to

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

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

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

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

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

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

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

1 (8) Provide funds for a share, not to exceed fifty per
 2 cent, of the principal amount of a loan made to a
 3 qualified borrower by a private lender who is unable
 4 otherwise to lend the borrower sufficient funds at
 5 reasonable rates in the purchase of residential
 6 property; [~~and~~]

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

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

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

13 SECTION 8. Section 226-58, Hawaii Revised Statutes, is
 14 amended by amending subsection (b) to read as follows:

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

19 Further, the county general plans should:

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

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

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

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

14 **PART III**

15 SECTION 9. The purpose of this part is to direct the
 16 department of land and natural resources and Hawaii housing
 17 finance and development corporation, in consultation with the
 18 commission on transit oriented development, to identify public
 19 lands within one-half mile of Honolulu's transit corridor and
 20 within a one-mile radius of any designated transit station
 21 suitable for affordable housing.

1 SECTION 10. Within one hundred eighty days following the
2 final determination by the city and county of Honolulu of the
3 specific mass transit corridor and the locations of the transit
4 stations serving the mass transit system, the department of land
5 and natural resources and the Hawaii housing finance and
6 development corporation, in consultation with the commission on
7 transit oriented development, established pursuant to section 6
8 of S.B. No. 442, shall submit a list to the governor identifying
9 all public lands within one-half mile from the transit corridor
10 and within a one-mile radius of any transit station that are
11 suitable for housing development pursuant to chapter 201H,
12 Hawaii Revised Statutes.

13 Within sixty days of the receipt of the list and pursuant
14 to section 171-11, Hawaii Revised Statutes, but without the
15 requirement of the approval of the board of land and natural
16 resources, the governor shall set aside those identified public
17 lands to the Hawaii housing finance and development corporation
18 for the development of housing pursuant to chapter 201H, Hawaii
19 Revised Statutes.

20 SECTION 11. Twenty days prior to the convening of the next
21 regular session of the legislature, following final
22 determination of the mass transit corridor and location of the

1 transit stations, but not less than one hundred eighty days
2 following the setting aside of the public lands pursuant to this
3 Act, the Hawaii housing finance and development corporation
4 shall submit a report to the legislature containing but not
5 limited to the following:

6 (1) A list of the public lands set aside pursuant to this
7 Act;

8 (2) A prioritized list of the public lands set aside in
9 accordance with each parcel's suitability, based on
10 location, topography, and proximity to existing
11 infrastructure, for housing development pursuant to
12 chapter 201H, Hawaii Revised Statutes;

13 (3) A proposed timetable for the development of housing on
14 the prioritized list of selected parcels; and

15 (4) An estimated capital cost for the development of
16 needed infrastructure and construction of housing
17 units on the parcels identified pursuant to this Act.

18 **PART IV**

19 SECTION 12. It is the intent of this Act not to jeopardize
20 the receipt of any federal aid nor to impair the obligation of
21 the State or any agency thereof to the holders of any bond
22 issued by the State or by any such agency, and to the extent,

1 and only to the extent, necessary to effectuate this intent, the
2 governor may modify the strict provisions of this Act, but shall
3 promptly report any such modification with reasons therefor to
4 the legislature at its next session thereafter for review by the
5 legislature.

6 SECTION 13. This Act does not affect rights and duties
7 that matured, penalties that were incurred, and proceedings that
8 were begun, before its effective date.

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

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

1 reference to section 6 of S.B. No. 442 in section 10 of this
2 Act.

3 SECTION 16. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 17. This Act shall take effect on June 30, 2050.

Report Title:

Housing; Infrastructure Development

Description:

Authorizes mixed-use housing projects and infrastructure projects that are associated with a housing or mixed-use housing project to be eligible for the expedited review process currently offered to qualifying housing projects; (part I); requires the counties to identify and designate affordable housing receiving zones to facilitate the development of affordable housing (part II); requires identification of public lands within one-half mile of Honolulu's transit corridor and within a one-mile radius of any designated transit station suitable for affordable housing; requires governor to set aside the identified public lands for housing development; requires report to legislature (part III). (SD2)