
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
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, the
12 State, and the legislature to carry out the mission of the Call
13 to Action and recommend solutions to address barriers to
14 affordable housing. Accordingly, the purpose of this Act is to
15 implement the legislative recommendations of the task force.

16 The State recognizes that the need for more affordable
17 housing in Hawaii remains a significant problem affecting all
18 segments of society. Although there is a process in place that



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

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

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

18 "§103- State and county contracts for services; civil
19 service exemption (a) Notwithstanding any other law to the
20 contrary, services that are customarily and historically
21 provided by civil servants may be obtained through state or
22 county contracts for services with private entities when the



1 circumstances and requirements set forth in subsections (b),
2 (c), (d), and (e) are present and satisfied.

3 (b) The State or a county may enter into a contract to
4 obtain services from a private entity for the review of
5 affordable housing project and permit applications, including
6 but not limited to inspections, discretionary permits, and
7 ministerial permits, provided that:

8 (1) The service provided in a contract authorized by this
9 section is for an affordable housing development as
10 defined by the counties or for affordable housing
11 developments provided to households that meet the
12 income threshold under section 201H-202(e)(2);

13 (2) There is a need for services to review affordable
14 housing development project and permit applications
15 and the estimated time necessary with current staff to
16 complete the reviews is longer than forty-five days
17 from the time that the project or permit application
18 was submitted to the State or a county; and

19 (3) The person providing the service shall not have been
20 nor will be within one year of the execution of the
21 service, an employee of the person requesting the
22 service.



1 (c) Services obtained through contracts authorized by this
2 section shall not be subject to, and shall be exempt from, civil
3 service.

4 (d) This section does not limit the authority of the State
5 or a county to ensure that the project and permit reviews for
6 the buildings, structures, and facilities within an affordable
7 housing development comply with state and county building codes
8 or to limit the authority and responsibility of fire officials
9 to conduct safety inspections under chapter 132.

10 (e) Private entities providing services to the State or a
11 county through contracts authorized by this section shall be
12 immune from liability, except for intentional misconduct or
13 malfeasance."

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

16 **"§46-33 Exemption of certain county positions.** In any
17 county with a population of 500,000 or more, the civil service
18 to which this section refers is comprised of all positions in
19 the public service of such county, now existing or hereafter
20 established, and embraces all personal services performed for
21 such county, except the following:



- 1 (1) Positions of officers elected by public vote;
2 positions of heads of departments; position of the
3 clerk; position of the manager of the board of water
4 supply and position of the chief of police[-];
5 (2) Positions in the office of mayor, but such positions,
6 except those of the heads of the offices of
7 information and complaint and budget director, shall
8 be included in the position classification plan.
9 Employees of the municipal library and of the offices
10 of information and complaint and budget director,
11 other than the heads of such offices, however, shall
12 not be exempted from civil service[-];
13 (3) Positions of deputies of the corporation counsel,
14 deputies of the prosecuting attorney, and law
15 clerks[-];
16 (4) Positions of members of any board, commission, or
17 equivalent body[-];
18 (5) Positions filled by inmates, patients, or students in
19 city institutions or in the schools[-];
20 (6) Positions of district magistrates, jurors, and
21 witnesses[-];



- 1 (7) Personal services obtained by contract where the
2 director of civil service has certified that the
3 service is special or unique, is essential to the
4 public interest and that, because of circumstances
5 surrounding its fulfillment, personnel to perform such
6 service cannot be obtained through normal civil
7 service recruitment procedures. Any such contract may
8 be for any period not exceeding one year[-];
- 9 (8) Personal services of a temporary nature needed in the
10 public interest where the need for the same does not
11 exceed ninety days, but before any person may be
12 employed to render such temporary service the director
13 of civil service shall certify that the service is of
14 a temporary nature and that recruitment through normal
15 civil service recruitment procedures is not
16 practicable. The employment of any person for service
17 of a temporary nature may be extended for good cause
18 for an additional period not to exceed ninety days
19 upon similar certification by the director subject to
20 approval of the civil service commission[-];
- 21 (9) Personal services performed on a fee, contract, or
22 piecework basis by persons who may lawfully perform



1 their duties concurrently with their private business
2 or profession or other private employment, if any, and
3 whose duties require only a portion of their time,
4 where it is impracticable to ascertain or anticipate
5 the portion of time devoted to the service of the city
6 and such fact is certified to by the director of civil
7 service[-];

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

12 (11) Positions of one first deputy and private secretaries
13 to heads of departments and their first deputies, but
14 private secretarial positions shall be included in the
15 position classification plan. The first deputy in the
16 department of civil service, however, shall not be
17 exempt from civil service[-]; and

18 (12) Personal services not currently being provided by
19 civil service employees that are obtained through a
20 contract or agreement for a grant, subsidy, or
21 purchase of service made pursuant to chapter 42F,
22 103D, 103F, or 201H; provided that with respect to



1 permit reviews and other services performed under
 2 section 103- , the person providing the service shall
 3 not have been nor will be within one year of the
 4 execution of the service, an employee of the person
 5 requesting the service.

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

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

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

14 (1) Commissioned and enlisted personnel of the Hawaii
 15 national guard as such, and positions in the Hawaii
 16 national guard that are required by state or federal
 17 laws or regulations or orders of the national guard to
 18 be filled from those commissioned or enlisted
 19 personnel;

20 (2) Positions filled by persons employed by contract where
 21 the director of human resources development has
 22 certified that the service is special or unique or is



- 1 essential to the public interest and that, because of
2 circumstances surrounding its fulfillment, personnel
3 to perform the service cannot be obtained through
4 normal civil service recruitment procedures. Any such
5 contract may be for any period not exceeding one year;
- 6 (3) Positions that must be filled without delay to comply
7 with a court order or decree if the director
8 determines that recruitment through normal recruitment
9 civil service procedures would result in delay or
10 noncompliance, such as the Felix-Cayetano consent
11 decree;
- 12 (4) Positions filled by the legislature or by either house
13 or any committee thereof;
- 14 (5) Employees in the office of the governor and office of
15 the lieutenant governor, and household employees at
16 Washington Place;
- 17 (6) Positions filled by popular vote;
- 18 (7) Department heads, officers, and members of any board,
19 commission, or other state agency whose appointments
20 are made by the governor or are required by law to be
21 confirmed by the senate;



- 1 (8) Judges, referees, receivers, masters, jurors, notaries
2 public, land court examiners, court commissioners, and
3 attorneys appointed by a state court for a special
4 temporary service;
- 5 (9) One bailiff for the chief justice of the supreme court
6 who shall have the powers and duties of a court
7 officer and bailiff under section 606-14; one
8 secretary or clerk for each justice of the supreme
9 court, each judge of the intermediate appellate court,
10 and each judge of the circuit court; one secretary for
11 the judicial council; one deputy administrative
12 director of the courts; three law clerks for the chief
13 justice of the supreme court, two law clerks for each
14 associate justice of the supreme court and each judge
15 of the intermediate appellate court, one law clerk for
16 each judge of the circuit court, two additional law
17 clerks for the civil administrative judge of the
18 circuit court of the first circuit, two additional law
19 clerks for the criminal administrative judge of the
20 circuit court of the first circuit, one additional law
21 clerk for the senior judge of the family court of the
22 first circuit, two additional law clerks for the civil



1 motions judge of the circuit court of the first
2 circuit, two additional law clerks for the criminal
3 motions judge of the circuit court of the first
4 circuit, and two law clerks for the administrative
5 judge of the district court of the first circuit; and
6 one private secretary for the administrative director
7 of the courts, the deputy administrative director of
8 the courts, each department head, each deputy or first
9 assistant, and each additional deputy, or assistant
10 deputy, or assistant defined in paragraph (16);

11 (10) First deputy and deputy attorneys general, the
12 administrative services manager of the department of
13 the attorney general, one secretary for the
14 administrative services manager, an administrator and
15 any support staff for the criminal and juvenile
16 justice resources coordination functions, and law
17 clerks;

18 (11) (A) Teachers, principals, vice-principals, complex
19 area superintendents, deputy and assistant
20 superintendents, other certificated personnel,
21 not more than twenty noncertificated



- 1 administrative, professional, and technical
- 2 personnel not engaged in instructional work;
- 3 (B) Effective July 1, 2003, teaching assistants,
- 4 educational assistants, bilingual/bicultural
- 5 school-home assistants, school psychologists,
- 6 psychological examiners, speech pathologists,
- 7 athletic health care trainers, alternative school
- 8 work study assistants, alternative school
- 9 educational/supportive services specialists,
- 10 alternative school project coordinators, and
- 11 communications aides in the department of
- 12 education;
- 13 (C) The special assistant to the state librarian and
- 14 one secretary for the special assistant to the
- 15 state librarian; and
- 16 (D) Members of the faculty of the University of
- 17 Hawaii, including research workers, extension
- 18 agents, personnel engaged in instructional work,
- 19 and administrative, professional, and technical
- 20 personnel of the university;
- 21 (12) Employees engaged in special, research, or
- 22 demonstration projects approved by the governor;



- 1 (13) Positions filled by inmates, kokuas, patients of state
2 institutions, persons with severe physical or mental
3 handicaps participating in the work experience
4 training programs, and students and positions filled
5 through federally funded programs that provide
6 temporary public service employment such as the
7 federal Comprehensive Employment and Training Act of
8 1973;
- 9 (14) A custodian or guide at Iolani Palace, the Royal
10 Mausoleum, and Hulihee Palace;
- 11 (15) Positions filled by persons employed on a fee,
12 contract, or piecework basis, who may lawfully perform
13 their duties concurrently with their private business
14 or profession or other private employment and whose
15 duties require only a portion of their time, if it is
16 impracticable to ascertain or anticipate the portion
17 of time to be devoted to the service of the State;
- 18 (16) Positions of first deputies or first assistants of
19 each department head appointed under or in the manner
20 provided in section 6, Article V, of the State
21 Constitution; three additional deputies or assistants
22 either in charge of the highways, harbors, and



1 airports divisions or other functions within the
2 department of transportation as may be assigned by the
3 director of transportation, with the approval of the
4 governor; four additional deputies in the department
5 of health, each in charge of one of the following:
6 behavioral health, environmental health, hospitals,
7 and health resources administration, including other
8 functions within the department as may be assigned by
9 the director of health, with the approval of the
10 governor; an administrative assistant to the state
11 librarian; and an administrative assistant to the
12 superintendent of education;

13 (17) Positions specifically exempted from this part by any
14 other law; provided that all of the positions defined
15 by paragraph (9) shall be included in the position
16 classification plan;

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

21 (19) Household employees at the official residence of the
22 president of the University of Hawaii;



- 1 (20) Employees in the department of education engaged in
2 the supervision of students during meal periods in the
3 distribution, collection, and counting of meal
4 tickets, and in the cleaning of classrooms after
5 school hours on a less than half-time basis;
- 6 (21) Employees hired under the tenant hire program of the
7 Hawaii public housing authority; provided that not
8 more than twenty-six per cent of the authority's work
9 force in any housing project maintained or operated by
10 the authority shall be hired under the tenant hire
11 program;
- 12 (22) Positions of the federally funded expanded food and
13 nutrition program of the University of Hawaii that
14 require the hiring of nutrition program assistants who
15 live in the areas they serve;
- 16 (23) Positions filled by severely handicapped persons who
17 are certified by the state vocational rehabilitation
18 office that they are able to perform safely the duties
19 of the positions;
- 20 (24) One public high school student to be selected by the
21 Hawaii state student council as a nonvoting member on



- 1 the board of education as authorized by the State
2 Constitution;
- 3 (25) Sheriff, first deputy sheriff, and second deputy
4 sheriff;
- 5 (26) A gender and other fairness coordinator hired by the
6 judiciary; [~~and~~]
- 7 (27) Positions in the Hawaii national guard youth challenge
8 academy[-]; and
- 9 (28) Personal services not currently being provided by
10 civil service employees that are obtained through a
11 contract or agreement for a grant, subsidy, or
12 purchase of service made pursuant to chapter 42F,
13 103D, 103F, or 201H; provided that with respect to
14 permit reviews and other services performed under
15 section 103- , the person providing the service shall
16 not have been nor will be within one year of the
17 execution of the service, an employee of the person
18 requesting the service.

19 The director shall determine the applicability of this
20 section to specific positions.

21 Nothing in this section shall be deemed to affect the civil
22 service status of any incumbent as it existed on July 1, 1955."



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

3 **"§76-77 Civil service and exemptions.** The civil service
4 to which this part applies comprises all positions in the public
5 service of each county, now existing or hereafter established,
6 and embraces all personal services performed for each county,
7 except the following:

- 8 (1) Positions in the office of the mayor; provided that
9 the positions shall be included in the classification
10 systems;
- 11 (2) Positions of officers elected by public vote,
12 positions of heads of departments, and positions of
13 one first deputy or first assistant of heads of
14 departments;
- 15 (3) Positions of deputy county attorneys, deputy
16 corporation counsel, deputy prosecuting attorneys, and
17 law clerks;
- 18 (4) Positions of members of any board, commission, or
19 agency;
- 20 (5) Positions filled by students; positions filled through
21 federally funded programs which provide temporary
22 public service employment such as the federal



1 Comprehensive Employment and Training Act of 1973; and
2 employees engaged in special research or demonstration
3 projects approved by the mayor, for which projects
4 federal funds are available;

5 (6) Positions of district judges, jurors, and witnesses;

6 (7) Positions filled by persons employed by contract where
7 the personnel director has certified that the service
8 is special or unique, is essential to the public
9 interest, and that because of the circumstances
10 surrounding its fulfillment, personnel to perform the
11 service cannot be recruited through normal civil
12 service procedures; provided that no contract pursuant
13 to this paragraph shall be for any period exceeding
14 one year;

15 (8) Positions of a temporary nature needed in the public
16 interest where the need does not exceed ninety days;
17 provided that before any person may be employed to
18 render temporary service pursuant to this paragraph,
19 the director shall certify that the service is of a
20 temporary nature and that recruitment through normal
21 civil service recruitment procedures is not
22 practicable; and provided further that the employment



1 of any person pursuant to this paragraph may be
2 extended for good cause for an additional period not
3 to exceed ninety days upon similar certification by
4 the director;

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

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

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

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

20 (13) Positions filled by persons with a severe disability
21 who are certified by the state vocational



1 rehabilitation office as able to safely perform the
2 duties of the positions;

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

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

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



1 defined in section 103D-1001, lasting for no more than
2 a year and at a cost of no more than \$850,000[-]; and
3 (17) Personal services not currently being provided by
4 civil service employees that are obtained through a
5 contract or agreement for a grant, subsidy, or
6 purchase of service made pursuant to chapter 42F,
7 103D, 103F, or 201H; provided that with respect to
8 permit reviews and other services performed under
9 section 103- , the person providing the service shall
10 not have been nor will be within one year of the
11 execution of the service, an employee of the person
12 requesting the service.

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

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

20 SECTION 6. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



H.B. NO. 357

1 SECTION 7. This Act shall take effect on July 1, 2009.

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INTRODUCED BY:

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Report Title:

Affordable Housing; Personal Services

Description:

Generally, allows state and county agencies to hire third party reviewers to facilitate the processing and issuance of building permits for affordable housing projects.

