
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 using third party review for electrical
7 and mechanical reviews. The use of third party review can
8 significantly shorten the review process time from months to
9 weeks. This in turn helps keep construction costs low and
10 ensures that homes remain affordable. The purpose of this Act
11 is to clarify the authority of counties and state agencies to
12 hire outside parties to handle permits and review approvals and
13 to limit the liability of those who conduct reviews.

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

17 "§103- State and county contracts for services; civil
18 service exemption. (a) Notwithstanding any other law to the
19 contrary, services that are customarily and historically
20 provided by civil servants may be obtained through state or
21 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); and

13 (2) The person providing the service shall not have been,
14 nor will be, within one year of the execution of the
15 service, an employee of the person requesting the
16 service.

17 (c) Services obtained through contracts authorized by this
18 section shall not be subject to, and shall be exempt from, civil
19 service.

20 (d) This section does not limit the authority of the State
21 or a county to ensure that the project and permit reviews for
22 the buildings, structures, and facilities within an affordable



1 housing development comply with state and county building codes
2 or to limit the authority and responsibility of fire officials
3 to conduct safety inspections under chapter 132.

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

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 heads 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, or
14 201H; provided that with respect to permit reviews and
15 other services performed under section 103- , the
16 person providing the service shall not have been, nor
17 will be, within one year of the execution of the
18 service, an employee of the person requesting the
19 service.
- 20 The director of civil service shall determine the applicability
21 of this section to specific positions."



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

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

7 (1) Commissioned and enlisted personnel of the Hawaii
8 national guard as such, and positions in the Hawaii
9 national guard that are required by state or federal
10 laws or regulations or orders of the national guard to
11 be filled from those commissioned or enlisted
12 personnel;

13 (2) Positions filled by persons employed by contract where
14 the director of human resources development has
15 certified that the service is special or unique or is
16 essential to the public interest and that, because of
17 circumstances surrounding its fulfillment, personnel
18 to perform the service cannot be obtained through
19 normal civil service recruitment procedures. Any such
20 contract may be for any period not exceeding one year;

21 (3) Positions that must be filled without delay to comply
22 with a court order or decree if the director



- 1 determines that recruitment through normal recruitment
2 civil service procedures would result in delay or
3 noncompliance, such as the Felix-Cayetano consent
4 decree;
- 5 (4) Positions filled by the legislature or by either house
6 or any committee thereof;
- 7 (5) Employees in the office of the governor and office of
8 the lieutenant governor, and household employees at
9 Washington Place;
- 10 (6) Positions filled by popular vote;
- 11 (7) Department heads, officers, and members of any board,
12 commission, or other state agency whose appointments
13 are made by the governor or are required by law to be
14 confirmed by the senate;
- 15 (8) Judges, referees, receivers, masters, jurors, notaries
16 public, land court examiners, court commissioners, and
17 attorneys appointed by a state court for a special
18 temporary service;
- 19 (9) One bailiff for the chief justice of the supreme court
20 who shall have the powers and duties of a court
21 officer and bailiff under section 606-14; one
22 secretary or clerk for each justice of the supreme



1 court, each judge of the intermediate appellate court,
2 and each judge of the circuit court; one secretary for
3 the judicial council; one deputy administrative
4 director of the courts; three law clerks for the chief
5 justice of the supreme court, two law clerks for each
6 associate justice of the supreme court and each judge
7 of the intermediate appellate court, one law clerk for
8 each judge of the circuit court, two additional law
9 clerks for the civil administrative judge of the
10 circuit court of the first circuit, two additional law
11 clerks for the criminal administrative judge of the
12 circuit court of the first circuit, one additional law
13 clerk for the senior judge of the family court of the
14 first circuit, two additional law clerks for the civil
15 motions judge of the circuit court of the first
16 circuit, two additional law clerks for the criminal
17 motions judge of the circuit court of the first
18 circuit, and two law clerks for the administrative
19 judge of the district court of the first circuit; and
20 one private secretary for the administrative director
21 of the courts, the deputy administrative director of
22 the courts, each department head, each deputy or first



- 1 assistant, and each additional deputy, or assistant
2 deputy, or assistant defined in paragraph (16);
- 3 (10) First deputy and deputy attorneys general, the
4 administrative services manager of the department of
5 the attorney general, one secretary for the
6 administrative services manager, an administrator and
7 any support staff for the criminal and juvenile
8 justice resources coordination functions, and law
9 clerks;
- 10 (11) (A) Teachers, principals, vice-principals, complex
11 area superintendents, deputy and assistant
12 superintendents, other certificated personnel,
13 not more than twenty noncertificated
14 administrative, professional, and technical
15 personnel not engaged in instructional work;
- 16 (B) Effective July 1, 2003, teaching assistants,
17 educational assistants, bilingual/bicultural
18 school-home assistants, school psychologists,
19 psychological examiners, speech pathologists,
20 athletic health care trainers, alternative school
21 work study assistants, alternative school
22 educational/supportive services specialists,



1 alternative school project coordinators, and
2 communications aides in the department of
3 education;

4 (C) The special assistant to the state librarian and
5 one secretary for the special assistant to the
6 state librarian; and

7 (D) Members of the faculty of the University of
8 Hawaii, including research workers, extension
9 agents, personnel engaged in instructional work,
10 and administrative, professional, and technical
11 personnel of the university;

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

14 (13) Positions filled by inmates, kokuas, patients of state
15 institutions, persons with severe physical or mental
16 handicaps participating in the work experience
17 training programs, and students and positions filled
18 through federally funded programs that provide
19 temporary public service employment such as the
20 federal Comprehensive Employment and Training Act of
21 1973;



- 1 (14) A custodian or guide at Iolani Palace, the Royal
2 Mausoleum, and Hulihee Palace;
- 3 (15) Positions filled by persons employed on a fee,
4 contract, or piecework basis, who may lawfully perform
5 their duties concurrently with their private business
6 or profession or other private employment and whose
7 duties require only a portion of their time, if it is
8 impracticable to ascertain or anticipate the portion
9 of time to be devoted to the service of the State;
- 10 (16) Positions of first deputies or first assistants of
11 each department head appointed under or in the manner
12 provided in section 6, Article V, of the State
13 Constitution; three additional deputies or assistants
14 either in charge of the highways, harbors, and
15 airports divisions or other functions within the
16 department of transportation as may be assigned by the
17 director of transportation, with the approval of the
18 governor; four additional deputies in the department
19 of health, each in charge of one of the following:
20 behavioral health, environmental health, hospitals,
21 and health resources administration, including other
22 functions within the department as may be assigned by



1 the director of health, with the approval of the
2 governor; an administrative assistant to the state
3 librarian; and an administrative assistant to the
4 superintendent of education;

5 (17) Positions specifically exempted from this part by any
6 other law; provided that all of the positions defined
7 by paragraph (9) shall be included in the position
8 classification plan;

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

13 (19) Household employees at the official residence of the
14 president of the University of Hawaii;

15 (20) Employees in the department of education engaged in
16 the supervision of students during meal periods in the
17 distribution, collection, and counting of meal
18 tickets, and in the cleaning of classrooms after
19 school hours on a less than half-time basis;

20 (21) Employees hired under the tenant hire program of the
21 Hawaii public housing authority; provided that not
22 more than twenty-six per cent of the authority's work



1 force in any housing project maintained or operated by
2 the authority shall be hired under the tenant hire
3 program;

4 (22) Positions of the federally funded expanded food and
5 nutrition program of the University of Hawaii that
6 require the hiring of nutrition program assistants who
7 live in the areas they serve;

8 (23) Positions filled by severely handicapped persons who
9 are certified by the state vocational rehabilitation
10 office that they are able to perform safely the duties
11 of the positions;

12 (24) One public high school student to be selected by the
13 Hawaii state student council as a nonvoting member on
14 the board of education as authorized by the State
15 Constitution;

16 (25) Sheriff, first deputy sheriff, and second deputy
17 sheriff;

18 (26) A gender and other fairness coordinator hired by the
19 judiciary; ~~and~~

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



1 (28) Personal services that are obtained through a contract
2 or agreement for a grant, subsidy, or purchase of
3 service made pursuant to chapter 42F, 103D, 103F, or
4 201H; provided that with respect to permit reviews and
5 other services performed under section 103- , the
6 person providing the service shall not have been, nor
7 will be, within one year of the execution of the
8 service, an employee of the person requesting the
9 service.

10 The director shall determine the applicability of this
11 section to specific positions.

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

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

16 "**§76-77 Civil service and exemptions.** The civil service
17 to which this part applies comprises all positions in the public
18 service of each county, now existing or hereafter established,
19 and embraces all personal services performed for each county,
20 except the following:



- 1 (1) Positions in the office of the mayor; provided that
2 the positions shall be included in the classification
3 systems;
- 4 (2) Positions of officers elected by public vote,
5 positions of heads of departments, and positions of
6 one first deputy or first assistant of heads of
7 departments;
- 8 (3) Positions of deputy county attorneys, deputy
9 corporation counsel, deputy prosecuting attorneys, and
10 law clerks;
- 11 (4) Positions of members of any board, commission, or
12 agency;
- 13 (5) Positions filled by students; positions filled through
14 federally funded programs which provide temporary
15 public service employment such as the federal
16 Comprehensive Employment and Training Act of 1973; and
17 employees engaged in special research or demonstration
18 projects approved by the mayor, for which projects
19 federal funds are available;
- 20 (6) Positions of district judges, jurors, and witnesses;
- 21 (7) Positions filled by persons employed by contract where
22 the personnel director has certified that the service



1 is special or unique, is essential to the public
2 interest, and that because of the circumstances
3 surrounding its fulfillment, personnel to perform the
4 service cannot be recruited through normal civil
5 service procedures; provided that no contract pursuant
6 to this paragraph shall be for any period exceeding
7 one year;

8 (8) Positions of a temporary nature needed in the public
9 interest where the need does not exceed ninety days;
10 provided that before any person may be employed to
11 render temporary service pursuant to this paragraph,
12 the director shall certify that the service is of a
13 temporary nature and that recruitment through normal
14 civil service recruitment procedures is not
15 practicable; and provided further that the employment
16 of any person pursuant to this paragraph may be
17 extended for good cause for an additional period not
18 to exceed ninety days upon similar certification by
19 the director;

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



- 1 (10) Positions specifically exempted from this part by any
2 other state statutes;
- 3 (11) Positions of one private secretary for each department
4 head; provided that the positions shall be included in
5 the classification systems;
- 6 (12) Positions filled by persons employed on a fee,
7 contract, or piecework basis who may lawfully perform
8 their duties concurrently with their private business
9 or profession or other private employment, if any, and
10 whose duties require only a portion of their time,
11 where it is impracticable to ascertain or anticipate
12 the portion of time devoted to the service of the
13 county and that fact is certified by the director;
- 14 (13) Positions filled by persons with a severe disability
15 who are certified by the state vocational
16 rehabilitation office as able to safely perform the
17 duties of the positions;
- 18 (14) Positions of the housing and community development
19 office or department of each county; provided that
20 this exemption shall not preclude each county from
21 establishing these positions as civil service
22 positions;



- 1 (15) The following positions in the office of the
2 prosecuting attorney: private secretary to the
3 prosecuting attorney, secretary to the first deputy
4 prosecuting attorney, and administrative or executive
5 assistants to the prosecuting attorney; provided that
6 the positions shall be included in the classification
7 systems; [~~and~~]
- 8 (16) Positions or contracts for personal services with
9 private persons or entities for services lasting no
10 more than one year and at a cost of no more than
11 \$750,000; provided that the exemption under this
12 paragraph shall apply to contracts for building,
13 custodial, and grounds maintenance services with
14 qualified community rehabilitation programs, as
15 defined in section 103D-1001, lasting for no more than
16 a year and at a cost of no more than \$850,000[~~-~~]; and
- 17 (17) 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, or
20 201H; provided that with respect to permit reviews and
21 other services performed under section 103- , the
22 person providing the service shall not have been, nor



1 will be, within one year of the execution of the
2 service, an employee of the person requesting the
3 service.

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

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

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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



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. (HB357 HD1)

