

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 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. Governor Lingle convened a
10 statewide task force comprised of representatives from the
11 counties, business, labor, developers, architects, nonprofit
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. Although there is a process



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

6 In 2005, the city and county of Honolulu began to address
7 their staffing shortage by utilizing third-party review for
8 electrical and mechanical reviews. The utilization of
9 third-party review can significantly shorten the review process
10 time from months to weeks. This in turn helps keep construction
11 costs low and ensures that homes remain affordable.

12 The purpose of this Act is to implement the legislative
13 recommendations of the task force by:

14 (1) Authorizing county and state agencies to hire private
15 entities to handle permits and review approvals; and

16 (2) Provide immunity from liability, except for
17 intentional misconduct or malfeasance, for the private
18 entities.

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



1 "§103- State and county contracts for services; civil
2 service exemption. (a) Notwithstanding any other law to the
3 contrary, services that are customarily and historically
4 provided by civil servants may be obtained through state or
5 county contracts for services with private entities when the
6 circumstances and requirements set forth in subsections (b)
7 through (e) are present and satisfied.

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

13 (1) The service provided in a contract authorized by this
14 section is for an affordable housing development as
15 defined by the counties or for affordable housing
16 developments provided to households that meet the
17 income threshold under section 201H-202(e) (2); and

18 (2) There is a need for services to review affordable
19 housing development project and permit applications
20 and the estimated time necessary to complete the
21 reviews with current staff is longer than forty-five



1 days from the time that the project or permit
2 application is submitted to the State or a county.

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

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

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

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

18 "**§46-33 Exemption of certain county positions.** In any
19 county with a population of 500,000 or more, the civil service
20 to which this section refers is comprised of all positions in
21 the public service of such county, now existing or hereafter



1 established, and embraces all personal services performed for
2 such county, except the following:

3 (1) Positions of officers elected by public vote;
4 positions of heads of departments; position of the
5 clerk; position of the manager of the board of water
6 supply and position of the chief of police[-];

7 (2) Positions in the office of mayor, but such positions,
8 except those of the heads of the offices of
9 information and complaint and budget director, shall
10 be included in the position classification plan.
11 Employees of the municipal library and of the offices
12 of information and complaint and budget director,
13 other than the heads of such offices, however, shall
14 not be exempted from civil service[-];

15 (3) Positions of deputies of the corporation counsel,
16 deputies of the prosecuting attorney, and law
17 clerks[-];

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

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



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



- 1 (9) Personal services performed on a fee, contract, or
2 piecework basis by persons who may lawfully perform
3 their duties concurrently with their private business
4 or profession or other private employment, if any, and
5 whose duties require only a portion of their time,
6 where it is impracticable to ascertain or anticipate
7 the portion of time devoted to the service of the city
8 and such fact is certified to by the director of civil
9 service[-];
- 10 (10) Positions of temporary election clerks in the office
11 of the clerk employed during the election periods, but
12 the positions filled by such employees shall be
13 included in the position classification plan[-];
- 14 (11) Positions of one first deputy and private secretaries
15 to heads of departments and their first deputies, but
16 private secretarial positions shall be included in the
17 position classification plan. The first deputy in the
18 department of civil service, however, shall not be
19 exempt from civil service[-]; and
- 20 (12) Personal services not currently being provided by
21 civil service employees that are obtained through a
22 contract or agreement for a grant, subsidy, or



1 purchase of service made pursuant to chapter 42F,
2 103D, 103F, or 201H.

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

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

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

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

17 (2) Positions filled by persons employed by contract where
18 the director of human resources development has
19 certified that the service is special or unique or is
20 essential to the public interest and that, because of
21 circumstances surrounding its fulfillment, personnel
22 to perform the service cannot be obtained through



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



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



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

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

14 (11) (A) Teachers, principals, vice-principals, complex
15 area superintendents, deputy and assistant
16 superintendents, other certificated personnel,
17 not more than twenty noncertificated
18 administrative, professional, and technical
19 personnel not engaged in instructional work;

20 (B) Effective July 1, 2003, teaching assistants,
21 educational assistants, bilingual/bicultural
22 school-home assistants, school psychologists,



1 psychological examiners, speech pathologists,
2 athletic health care trainers, alternative school
3 work study assistants, alternative school
4 educational/supportive services specialists,
5 alternative school project coordinators, and
6 communications aides in the department of
7 education;

8 (C) The special assistant to the state librarian and
9 one secretary for the special assistant to the
10 state librarian; and

11 (D) Members of the faculty of the University of
12 Hawaii, including research workers, extension
13 agents, personnel engaged in instructional work,
14 and administrative, professional, and technical
15 personnel of the university;

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

18 (13) Positions filled by inmates, kokuas, patients of state
19 institutions, persons with severe physical or mental
20 handicaps participating in the work experience
21 training programs, and students and positions filled
22 through federally funded programs that provide



1 temporary public service employment such as the
2 federal Comprehensive Employment and Training Act of
3 1973;

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

6 (15) 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 and whose
10 duties require only a portion of their time, if it is
11 impracticable to ascertain or anticipate the portion
12 of time to be devoted to the service of the State;

13 (16) Positions of first deputies or first assistants of
14 each department head appointed under or in the manner
15 provided in section 6, [~~Article~~] article V, of the
16 [~~State Constitution;~~] state constitution; three
17 additional deputies or assistants either in charge of
18 the highways, harbors, and airports divisions or other
19 functions within the department of transportation as
20 may be assigned by the director of transportation,
21 with the approval of the governor; four additional
22 deputies in the department of health, each in charge



1 of one of the following: behavioral health,
2 environmental health, hospitals, and health resources
3 administration, including other functions within the
4 department as may be assigned by the director of
5 health, with the approval of the governor; an
6 administrative assistant to the state librarian; and
7 an administrative assistant to the superintendent of
8 education;

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

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

17 (19) Household employees at the official residence of the
18 president of the University of Hawaii;

19 (20) Employees in the department of education engaged in
20 the supervision of students during meal periods in the
21 distribution, collection, and counting of meal



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



- 1 (26) A gender and other fairness coordinator hired by the
- 2 judiciary; [~~and~~]
- 3 (27) Positions in the Hawaii national guard youth challenge
- 4 academy[-]; and
- 5 (28) Personal services not currently being provided by
- 6 civil service employees that are obtained through a
- 7 contract or agreement for a grant, subsidy, or
- 8 purchase of service made pursuant to chapter 42F,
- 9 103D, 103F, or 201H.

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 not currently being provided by
18 civil service employees that are obtained through a
19 contract or agreement for a grant, subsidy, or
20 purchase of service made pursuant to chapter 42F,
21 103D, 103F, or 201H.



S.B. NO. 751

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

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

8 SECTION 6. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect upon its approval.

11

INTRODUCED BY:

Norman Sarbin



Report Title:

Affordable Housing; Third Party Review

Description:

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

