

JAN 21 2021

A BILL FOR AN ACT

RELATING TO HOUSING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new section to part I to be appropriately designated
3 and to read as follows:

4 "§46- Housing development projects; emergency shelters;
5 restrictions; fines. (a) This section shall be known and may
6 be cited as the Housing Accountability Act.

7 (b) No county shall disapprove a housing development
8 project or an emergency shelter, or condition approval in a
9 manner that renders the housing development project infeasible
10 for development of housing or an emergency shelter, including
11 through the use of design review standards, unless it makes
12 written findings, based upon a preponderance of the evidence in
13 the record, as to one of the following:

14 (1) The county has met or exceeded any affordable housing
15 obligation to develop vacant lots, single-family
16 residences, multi-family residences, or any other type
17 of residence for sale or rent to individuals with a

1 specified income range; provided that any disapproval
2 or conditional approval pursuant to this paragraph
3 shall be in accordance with applicable laws, rules, or
4 standards;

5 (2) The housing development project or emergency shelter
6 as proposed would have a specific, adverse impact upon
7 the public health or safety, and there is no feasible
8 method to satisfactorily mitigate or avoid the
9 specific, adverse impact without rendering the
10 development of housing or emergency shelter
11 financially infeasible; provided that inconsistency
12 with applicable zoning ordinances or state land use
13 classification shall not constitute a specific,
14 adverse impact upon the public health or safety;

15 (3) The denial of the housing development project or
16 imposition of conditions is required in order to
17 comply with specific state or federal law, and there
18 is no feasible method to comply without rendering the
19 development of housing or emergency shelter
20 financially infeasible;



1 (4) The housing development project or emergency shelter
2 is proposed on land within the agricultural district
3 or conservation district, pursuant to section 205-2,
4 or does not have adequate water or wastewater
5 facilities to serve the project; and

6 (5) The housing development project or emergency shelter
7 is inconsistent with the applicable zoning ordinances,
8 county general plan, and state land use
9 classifications; provided that this paragraph shall
10 not be used to disapprove or conditionally approve a
11 housing development project or emergency shelter if:

12 (A) A change was made to the applicable zoning
13 ordinances, county general plan, or state land
14 use classification subsequent to the date the
15 application was deemed complete;

16 (B) The county has failed to identify lands that can
17 be developed for housing to provide for the
18 county's share of the regional housing needs for
19 all income levels and the housing development
20 project is proposed for a site designated in the
21 county general plan for residential uses, or



1 commercial uses if residential uses are permitted
2 or conditionally permitted within commercial
3 designations. In any action in court, the burden
4 of proof shall be on the county to show that its
5 plan identifies adequate sites with appropriate
6 zoning and development standards and with
7 services and facilities to accommodate the
8 county's share of the regional housing need; and

9 (C) The emergency shelter is proposed for a site
10 designated in the county general plan for
11 industrial, commercial, or multifamily
12 residential uses and the county has failed to:

13 (i) Identify a zone where emergency shelters are
14 allowed as a permitted use without a
15 conditional use or other discretionary
16 permit;

17 (ii) Demonstrate that the identified zone
18 includes sufficient capacity to accommodate
19 the need for an emergency shelter; or

20 (iii) Demonstrate that the identified zone can
21 accommodate at least one emergency shelter.



1 (c) Nothing in this section shall be construed to prohibit
2 a county from requiring the housing development project to
3 comply with objective, quantifiable, written development
4 standards, conditions, and policies appropriate to, and
5 consistent with, meeting the county's share of the regional
6 housing need; provided that the development standards,
7 conditions, and policies shall be applied to facilitate and
8 accommodate development at the density allowed on the site and
9 proposed by the development.

10 (d) Nothing in this section shall be construed to prohibit
11 a county from requiring an emergency shelter project to comply
12 with objective, quantifiable, written development standards,
13 conditions, and policies; provided that the development
14 standards, conditions, and policies shall be applied by the
15 county to facilitate and accommodate the development of the
16 emergency shelter.

17 (e) This section does not prohibit a county from imposing
18 fees and other exactions otherwise authorized by law that are
19 essential to provide necessary public services and facilities to
20 the housing development project or emergency shelter.



1 (f) For purposes of this section, a housing development
2 project or emergency shelter shall be deemed consistent,
3 compliant, and in conformity with an applicable plan, program,
4 policy, ordinance, standard, requirement, or other similar
5 provision if there is substantial evidence that would allow a
6 reasonable person to conclude that the housing development
7 project or emergency shelter is consistent, compliant, or in
8 conformity.

9 (g) If any county denies approval or imposes conditions,
10 including design changes, lower density, or a reduction of the
11 percentage of a lot that may be occupied by a building or
12 structure under the applicable planning and zoning in force at
13 the time the application is deemed complete, and the denial of
14 the development or the imposition of conditions on the
15 development is the subject of a court action that challenges the
16 denial or the imposition of conditions, then the burden of proof
17 shall be on the county to show that its decision is consistent
18 with the findings as described in subsection (b).

19 (h) When a proposed housing development project complies
20 with applicable, objective county general plan, zoning, and
21 subdivision standards and criteria, including design review



1 standards, in effect at the time that the housing development
2 project's application is determined to be complete, but the
3 county proposes to disapprove the project or to impose a
4 condition that the project be developed at a lower density, the
5 county shall base its decision regarding the proposed housing
6 development project upon written findings supported by a
7 preponderance of the evidence on the record that the following
8 conditions exist:

9 (1) The housing development project would have a specific,
10 adverse impact upon the public health or safety unless
11 the housing development project is disapproved or
12 approved upon the condition that the housing
13 development project be developed at a lower density;

14 and

15 (2) There is no feasible method to satisfactorily mitigate
16 or avoid the adverse impact other than the disapproval
17 of the housing development project or the approval of
18 the housing development project upon the condition
19 that it be developed at a lower density.

20 (i) If the county considers a proposed housing development
21 project to be inconsistent, not in compliance, or not in



conformity with an applicable plan, program, policy, ordinance,
standard, requirement, or other similar provision as specified
in this part, the county shall provide the applicant with
written documentation identifying the provision, and an
explanation of the reason the county considers the housing
development to be inconsistent, not in compliance, or not in
conformity as follows:

(1) Within thirty days of the date that the application
for the housing development project is determined to
be complete, if the housing development project
contains one hundred fifty or fewer housing units; or

(2) Within sixty days of the date that the application for
the housing development project is determined to be
complete, if the housing development project contains
more than one hundred fifty units.

(j) If the county fails to provide the required
documentation pursuant to subsection (i), the housing
development project shall be deemed consistent, compliant, and
in conformity with the applicable plan, program, policy,
ordinance, standard, requirement, or other similar provision.



1 (k) The applicant, a person who would be eligible to apply
2 for residency in the housing development project or emergency
3 shelter or a housing organization may bring an action to enforce
4 this section. If, in any action brought to enforce this
5 section, a court finds that either the county, in violation of
6 subsection (b), disapproved a housing development project or
7 conditioned its approval in a manner rendering it infeasible for
8 the development of housing or an emergency shelter without
9 making the findings required by this section or without making
10 findings supported by a preponderance of the evidence, or the
11 county, in violation of subsection (h), disapproved a housing
12 development project complying with applicable, objective county
13 general plan and zoning standards and criteria, or imposed a
14 condition that the housing development project be developed at a
15 lower density, without making the findings required by this
16 section or without making findings supported by a preponderance
17 of the evidence, the court shall issue an order or judgment
18 compelling compliance with this section within sixty days,
19 including but not limited to an order that the county take
20 action on the housing development project or emergency shelter.
21 The court may issue an order or judgment directing the county to



1 approve the housing development project or emergency shelter if
2 the court finds that the county acted in bad faith when it
3 disapproved or conditionally approved the housing development
4 project or emergency shelter in violation of this section. The
5 court shall retain jurisdiction to ensure that its order or
6 judgment is carried out and shall award reasonable attorney's
7 fees and costs of suit to the plaintiff or petitioner, except
8 under extraordinary circumstances in which the court finds that
9 awarding fees would not further the purposes of this section.

10 (l) Upon a determination that the county has failed to
11 comply with the order or judgment compelling compliance with
12 this section within sixty days issued pursuant to subsection
13 (k), the court shall impose fines on the county that has
14 violated this section. The fine shall be in a minimum amount of
15 \$10,000 per housing unit in the housing development project on
16 the date the application was deemed complete. Any fines
17 collected pursuant to this section shall be deposited into the
18 dwelling unit revolving fund created pursuant to
19 section 201H-191.

20 (m) If the court determines that its order or judgment has
21 not been carried out within sixty days, the court may issue



1 further orders as provided by law to ensure that the purposes
2 and policies of this section are fulfilled.

3 (n) For the purposes of this section:

4 "Housing development project" means a use consisting of any
5 of the following:

6 (1) Residential units that are priced to be affordable to
7 residents at or below one hundred per cent area medium
8 income only;

9 (2) Mixed-use developments consisting of residential and
10 nonresidential uses with at least two-thirds of the
11 square footage designated for residential use; or

12 (3) Transitional housing or supportive housing.

13 "Housing organization" means a trade or industry group
14 whose local members are primarily engaged in the construction or
15 management of housing units or a nonprofit organization whose
16 mission includes providing or advocating for increased access to
17 housing for low income households and have filed written or oral
18 comments with the local agency prior to action on the housing
19 development project.

1 "Lower density" includes any conditions that have the same
2 effect or impact on the ability of the project to provide
3 housing.

4 "Specific, adverse impact" means a significant,
5 quantifiable, direct, and unavoidable impact, based on
6 objective, identified written public health or safety standards,
7 policies, or conditions as they existed on the date an
8 application was deemed complete."

9 SECTION 2. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 3. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14
INTRODUCED BY:





S.B. NO. 42

Report Title:

Housing Development Project; Emergency Shelters

Description:

Restricts any county from disapproving or imposing certain conditions on a housing development project for housing or an emergency shelter unless the county meets certain requirements.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

