

JAN 19 2023

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 Accountability Act; housing development
5 projects; emergency shelters; restrictions; fines. (a) This
6 section shall be known and may be cited as the Housing
7 Accountability Act.

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

15 (1) The county has met or exceeded any affordable housing
16 obligation to develop vacant lots, single-family
17 residences, multi-family residences, or any other type



1 of residence for sale or rent to individuals with a
2 specified income range; provided that any disapproval
3 or conditional approval pursuant to this paragraph
4 shall be in accordance with applicable laws, rules, or
5 standards;

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

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



1 development of the housing development project or
2 emergency shelter financially infeasible;
3 (4) The housing development project or emergency shelter
4 is proposed on land within an agricultural district or
5 conservation district, pursuant to section 205-2, or
6 does not have adequate water or wastewater facilities
7 to serve the project; or
8 (5) The housing development project or emergency shelter
9 is inconsistent with the applicable zoning ordinances,
10 county general plan, and state land use
11 classifications; provided that this paragraph shall
12 not be used to disapprove or conditionally approve a
13 housing development project or emergency shelter if:
14 (A) A change was made to the applicable zoning
15 ordinances, county general plan, or state land
16 use classification subsequent to the date the
17 application was deemed complete;
18 (B) The county has failed to identify lands that can
19 be developed for housing to provide for the
20 county's share of the regional housing needs for
21 all income levels and the housing development



1 project is proposed for a site designated in the
2 county general plan for residential uses, or
3 commercial uses if residential uses are permitted
4 or conditionally permitted within commercial
5 designations. In any action in court, the burden
6 of proof shall be on the county to show that its
7 plan identifies adequate sites with appropriate
8 zoning and development standards and with
9 services and facilities to accommodate the
10 county's share of the regional housing need; and
11 (C) The emergency shelter is proposed for a site
12 designated in the county general plan for
13 industrial, commercial, or multifamily
14 residential uses and the county has failed to:
15 (i) Identify a zone where emergency shelters are
16 allowed as a permitted use without a
17 conditional use or other discretionary
18 permit;
19 (ii) Demonstrate that the identified zone
20 includes insufficient capacity to



1 accommodate the need for an emergency
2 shelter; or
3 (iii) Demonstrate that the identified zone cannot
4 accommodate at least one emergency shelter.

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

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



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

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

13 (g) If any county denies approval or imposes conditions,
14 including design changes, lower density, or a reduction of the
15 percentage of a lot that may be occupied by a building or
16 structure under the applicable planning and zoning in force at
17 the time the application is deemed complete, and the denial of
18 the development or the imposition of conditions on the
19 development is the subject of a court action that challenges the
20 denial or the imposition of conditions, then the burden of proof



1 shall be on the county to show that its decision is consistent
2 with the findings as described in subsection (b).

3 (h) When a proposed housing development project complies
4 with applicable, objective county general plan, zoning, and
5 subdivision standards and criteria, including design review
6 standards, in effect at the time that the housing development
7 project's application is determined to be complete, but the
8 county proposes to disapprove the project or to impose a
9 condition that the project be developed at a lower density, the
10 county shall base its decision regarding the proposed housing
11 development project upon written findings supported by a
12 preponderance of the evidence on the record that the following
13 conditions exist:

14 (1) The housing development project would have a specific,
15 adverse impact on public health or safety unless the
16 housing development project is disapproved or approved
17 upon the condition that the housing development
18 project be developed at a lower density; and

19 (2) There is no feasible method to satisfactorily mitigate
20 or avoid the adverse impact other than the disapproval
21 of the housing development project or the approval of



1 the housing development project upon the condition
2 that it be developed at a lower density.

3 (i) If the county considers a proposed housing development
4 project to be inconsistent, not in compliance, or not in
5 conformity with an applicable plan, program, policy, ordinance,
6 standard, requirement, or other similar provision as specified
7 in this part, the county shall provide the applicant with
8 written documentation identifying the provision, and an
9 explanation of the reason the county considers the housing
10 development to be inconsistent, not in compliance, or not in
11 conformity as follows:

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

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

20 (j) If the county fails to provide the required
21 documentation pursuant to subsection (i), the housing



1 development project shall be deemed consistent, compliant, and
2 in conformity with the applicable plan, program, policy,
3 ordinance, standard, requirement, or other similar provision.

4 (k) The applicant, a person who would be eligible to apply
5 for residency in the housing development project or emergency
6 shelter, or a housing organization may bring an action to
7 enforce this section. If, in any action brought to enforce this
8 section, a court finds that either the county, in violation of
9 subsection (b), disapproved a housing development project or
10 conditioned its approval in a manner rendering the development
11 of the housing development project or an emergency shelter
12 infeasible without making the findings required by this section
13 or without making findings supported by a preponderance of the
14 evidence, or the county, in violation of subsection (h),
15 disapproved a housing development project complying with
16 applicable, objective county general plan and zoning standards
17 and criteria, or imposed a condition that the housing
18 development project be developed at a lower density, without
19 making the findings required by this section or without making
20 findings supported by a preponderance of the evidence, the court
21 shall issue an order or judgment compelling compliance with this



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

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



1 dwelling unit revolving fund created pursuant to
2 section 201H-191.

3 (m) If the court determines that its order or judgment has
4 not been carried out within sixty days, the court may issue
5 further orders as provided by law to ensure that the purposes
6 and policies of this section are fulfilled.

7 (n) For the purposes of this section:

8 "Housing development project" means a use consisting of any
9 of the following:

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

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

16 (3) Transitional housing or supportive housing.

17 "Housing organization" means a trade or industry group
18 whose local members are primarily engaged in the construction or
19 management of housing units or a nonprofit organization whose
20 mission includes providing or advocating for increased access to
21 housing for low income households and have filed written or oral



1 comments with the local agency prior to action on the housing
2 development project.

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

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

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

14 SECTION 3. New statutory material is underscored.

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

16

INTRODUCED BY: 



S.B. NO. 336

Report Title:

Housing Development Project; Emergency Shelters; Counties

Description:

Restricts any county from disapproving or imposing certain conditions on a housing development project 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.

