
A BILL FOR AN ACT

RELATING TO PERMIT APPROVALS.

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

1 SECTION 1. The legislature finds that automatic approval
2 of a business or development-related permit is poor public
3 policy. It can lead to negative consequences for the community.
4 An automatic permit approval occurs after government agencies
5 fail to take timely action to grant or deny an application for a
6 business- or development-related permit, license, or approval.
7 As a result, applications for development approvals; land
8 reclassifications; liquor licenses; and other permits, licenses,
9 and approvals can be granted by default.

10 Automatic approval eliminates the opportunity for local
11 decision making. Applications are often complex and must be
12 carefully reviewed, which can take significant time. Often,
13 however, departments are understaffed, and people serving on
14 boards are volunteers. Any good decision requires open public
15 input, thorough discussion, and careful consideration of various
16 needs from the county government, environmental interests, and
17 community groups. When a government body unjustifiably fails to
18 take timely action on an application, the employees responsible



1 should be held accountable, but the public should not have to
2 suffer the consequences of having an ill-advised or harmful
3 project proceed.

4 Prior to 1998, only applications to the board of land and
5 natural resources were subject to automatic approval. In 1996,
6 the board voted 3-2 to deny the Hawaii Electric Light Company's
7 request to install two combustion turbines in its power plant on
8 conservation district land in Keahole. The hearings officer,
9 retired Hawaii supreme court justice Frank Padgett, had
10 recommended that the permit be denied on a number of legal
11 grounds. One board member did not vote because the member owned
12 shares in the Hawaii Electric Light Company, which caused a
13 conflict of interest. Despite the vote, the third circuit court
14 held that since a majority of all six members of the board are
15 needed to ratify an action, no legally binding decision was
16 reached prior to the deadline for action and the permit was
17 automatically approved. After the permit was issued, fourteen
18 lawsuits ensued over the Keahole power plant, which stalled the
19 project for years.

20 In November 1999, the Kauai planning commission considered
21 a proposal from Kauai Electric Company to build a new power
22 plant on agricultural land. The community testified in force



1 against the project. Two of the seven commissioners were absent
2 at the time of the vote. Three supported the power plant. Two
3 opposed it. One of the proponents asked the corporation counsel
4 for an opinion on the legal effect of a 3-2 vote. The answer
5 was that the effect would be automatic approval, without any
6 conditions at all. To ensure that harm caused by the plant
7 would be somewhat mitigated by a conditional approval, one of
8 the opponents voted for the plant, creating a 4-1 vote and
9 eliminating an automatic approval.

10 The county of Hawaii has granted by default a number of
11 zoning and subdivision variances because it could not
12 satisfactorily review the application within the time limits.

13 The purpose of this Act is to allow a county to opt out of
14 the automatic approval law by adopting an ordinance to exempt
15 the county as a whole or any county agency from the automatic
16 permit approval law.

17 SECTION 2. Section 91-13.5, Hawaii Revised Statutes, is
18 amended by amending subsection (e) to read as follows:

19 "(e) This section shall not apply to [any]:

20 (1) Any proceedings of the public utilities commission

21 []; or



1 (2) Any county or county agency that is exempted by county
2 ordinance from this section."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

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



SB 2909 SD1

HD1

Report Title:

Permit Approvals; County Option

Description:

Allows a county to opt out of the automatic permit approval law by adopting an ordinance to exempt the county as a whole or any county agency from the law. (SB2909 HD1)

SB2909 HD1 HMS 2006-2981

