

JAN 25 2006

S.B. NO. 2909

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 permit
2 approval is poor public policy. It can lead to negative
3 consequences for the community. An automatic approval occurs
4 after government agencies fail to take timely action to grant or
5 deny an application for a business or development-related
6 permit, license, or approval. As a result, applications for
7 development approvals, land reclassifications, liquor licenses,
8 and other permits, licenses, and approvals, can be granted by
9 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. In many
13 situations, this is difficult because departments are
14 understaffed and people serving on boards are volunteers. Any
15 good decision requires open public input, thorough discussion,
16 and careful consideration of various needs from the county
17 government, environmental interests, and community groups. When
18 a government body unjustifiably fails to take timely action on



1 an application, the employees responsible should be held
2 accountable, but the public should not have to suffer the
3 consequences of having an ill-advised or harmful project go
4 forward.

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

21 In November 1999, the Kaua'i planning commission considered
22 a proposal from Kaua'i Electric Company to build a new power



1 plant on agricultural land. The community testified in force
 2 against the project. Two of the seven commissioners were
 3 absent. Three supported the power plant. Two opposed it. One
 4 of the proponents asked the corporation counsel for an opinion
 5 on the legal effect of a 3-2 vote. The answer was that the
 6 effect would be automatic approval, without any conditions at
 7 all. In order to ensure that harm caused by the plant would be
 8 mitigated a little bit by a conditional approval, one of the
 9 opponents voted for the plant, making it a 4-1 vote and
 10 eliminating an automatic approval.

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

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

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

20 "(e) This section shall not apply to [any];

21 (1) Any proceedings of the public utilities commission

22 [-]; 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.

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INTRODUCED BY: Ray L. Acosta

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J. K. Gil
Trananne Chun Oakland
Clara A. Dishler



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.

