

## ACT 280

S.B. NO. 2909

A Bill for an Act Relating to Permit Approvals.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

Automatic approval eliminates the opportunity for local decision making. Applications are often complex and must be carefully reviewed, which can take significant time. In many situations, this is difficult because departments are understaffed and people serving on boards are volunteers. Any good decision requires open public input, thorough discussion, and careful consideration of various needs from the county government, environmental interests, and community groups. When a government body unjustifiably fails to take timely action on an application, the employees responsible should be held accountable, but the public should not have to suffer the consequences of having an ill-advised or harmful project go forward.

Prior to 1998, only applications to the board of land and natural resources were subject to automatic approval. In 1996, the board voted 3-2 to deny the Hawaii Electric Light Company's request to install two combustion turbines in its power plant on conservation district land in Ke'ahole. This vote took place after the

hearings officer, retired supreme court justice Frank Padgett, recommended that the permit be denied on a number of legal grounds. One board member did not vote because the member owned shares in the Hawaii Electric Light Company and had a conflict of interest. Despite the vote, the third circuit court held that since a majority of all six members of the board are needed to ratify an action, no legally binding decision was reached prior to the deadline for action and the permit was automatically approved. After the permit was issued, fourteen lawsuits ensued over the Ke'ahole power plant, which stalled the project for years.

In November 1999, the Kaua'i planning commission considered a proposal from Kaua'i Electric Company to build a new power plant on agricultural land. The community testified in force against the project. Two of the seven commissioners were absent. Three supported the power plant. Two opposed it. One of the proponents asked the corporation counsel for an opinion on the legal effect of a 3-2 vote. The answer was that the effect would be automatic approval, without any conditions at all. In order to ensure that harm caused by the plant would be mitigated a little bit by a conditional approval, one of the opponents voted for the plant, making it a 4-1 vote and eliminating an automatic approval.

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

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

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

“(e) This section shall not apply to ~~any~~:

- (1) Any proceedings of the public utilities commission[-]; or
- (2) Any county or county agency that is exempted by county ordinance from this section.”

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

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

(Approved July 6, 2006.)