Relating to the regulatory processes

Senate Committee on Ways and Means

Public Hearing - April 6, 1999
12:00 p.m., Room 211, State Capitol

by
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HB 1029 SD1 (proposed draft) provides explicit guidance to agencies in the formulation of their rules for implementation of maximum time intervals for permit approval.

Our statement on this measure does not constitute an institutional position of the University of Hawaii.

Our prior testimonies on Senate Bills 792 and 1535, and on House Bill 1349, all addressing issues relating to Act 164 enacted last year have raised various concerns, including:

1. impairment of the government's capacity to thoughtfully and comprehensively plan;
2. failure to consider sources of approval delay other than dilatory or prejudiced agency action;
3. abdication of government accountability.

These concerns remain valid, and I incorporate all my prior statements on these measures herein. However, the suggestion has been made that my efforts to raise issues in this arena constitute "overreaching", and that Act 164 is really not as problematic a statute as I construe. I have undertaken considerable research into the area of automatic approval statutes nationwide, and I now state unequivocally that on the basis of comparative legislative analysis and examination of case law, Hawaii's version of an automatic approval statute, rather than being a vehicle for conveyance of certainty and predictability to the business and development communities, is a guaranteed full employment act for attorneys. Instead of expedited approval processes, the act will result in an unending stream of litigation, for two explicit reasons:

1. Hawaii's statute is so vague and imprecise in its provisions that courts will have leeway to reach vastly divergent rulings.
2. Hawaii's statute fails to include a detailed statement of legislative intent, leaving interpretation of the underlying purpose of Act 164 to courts that have an enormous body of highly ambiguous case law on which to rely for precedent.