

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
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HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
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To: The Honorable Nicole E. Lowen, Chair;
The Honorable Lisa Marten, Vice Chair;
and Members of the House Committee on Energy & Environment Protection

From: Isaac W. Choy, Director
Department of Taxation

Date: February 9, 2021
Time: 9:00 A.M.
Place: Via Video Conference, State Capitol

Re: H.B. 1317, Relating to Environmental Management

The Department of Taxation (Department) offers the following comments regarding H.B. 1317, for your consideration.

H.B. 1317 allows county governments to have the ability to enter into private-public partnerships for services and transferring of wastewater treatment facilities to a private entity or its wholly owned nonprofit management entity for delivery of services. The measure also requires a tax clearance from the Department and the Internal Revenue Service be obtained in order to participate in the program. H.B. 1317 is effective upon its approval.

The Department notes under the requirement to obtain tax clearances for certain contracts with the state and counties set forth in section 103-53, Hawaii Revised Statutes, tax clearances may be given to taxpayers who are in good standing under a plan in which delinquent taxes, interest, and penalties are being paid to the Department, or who are contesting the debts in an administrative or judicial appeal.

For consistency and ease of administration, the Department respectfully requests that new section 340B-H(b)(6) on page 14 be amended to read:

- (6) Submit tax clearances from the director of taxation and the Internal Revenue Service to the effect that:
 - (A) All tax returns due have been filed and all taxes, interest, and penalties levied or accrued against have been paid;
 - (B) The entity or nonprofit is in good standing under a plan in which delinquent taxes, interest, and

- penalties are being paid to the department of taxation or the Internal Revenue Service, if applicable, in installments; or
- (C) The validity of any outstanding taxes, penalties, or interest is being contested in an administrative or judicial appeal with the department of taxation or Internal Revenue Service.

The Department also requests that the Department be given the authority to mandate the electronic filing of the tax clearance application. Electronic filing of tax documents significantly reduces the administrative burden of processing paper documents.

Thank you for the opportunity to provide comments on this measure.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY- FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. 1317, RELATING TO ENVIRONMENTAL MANAGEMENT.

BEFORE THE:

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

DATE: Tuesday, February 9, 2021 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Dale Sakata,
Deputy Attorney General, at 587-3050)

Chair Lowen and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

This bill would allow county governments to enter into private-public partnerships and transfer wastewater treatment facility management and operation responsibilities to private entities. Further, it would allow transfer of the right to provide wastewater treatment and resource recovery services to those private entities. The bill proposes to create a new part in chapter 340B, Hawaii Revised Statutes (HRS) to enable such public-private collaboration. It proposes amendments to section 89-8.5, HRS, to allow the counties to negotiate with bargaining units and execute memoranda of understanding for employees under its control to alter existing or new collective bargaining agreements with respect to items subject to section 89-9, HRS. Also, this bill will allow the private entity to request the corresponding county to subsidize operations and fund capital expenditures of any transferred facility for up to an as-yet-unspecified number of years.

The Department notes that the bill proposes to mirror the framework used by the Hawaii Health Systems Corporation (HHSC) to transfer management and operations of medical facilities under its control. See Act 103, Session Laws of Hawaii 2015.

Generally, the numerous references to HHSC in this bill are inapplicable, as HHSC has

no authority over, and does not operate or manage, wastewater treatment facilities. We recommend removing all references to HHSC in the proposed amendments in this bill.

We note further that the amendments this bill proposes for the contemplated wastewater treatment facility transaction are to be included in chapter 340B, HRS. Chapter 340B, however, relates to wastewater treatment personnel, and focuses on certification requirements for personnel operating wastewater treatment plants. Chapter 46, HRS, relating to county organization and administration, may be a more appropriate chapter for these new provisions relating to the transfer of wastewater treatment facility management and operation.

The definition of "private entity" on page 5, lines 13-19, includes a business organization that "[h]as a certificate of need to operate, maintain, design, and construct a wastewater treatment plant, and is able to demonstrate the successfulness of the resource recovery program pursuant to chapter 340A." A certificate of need is peculiar to the State Health Planning and Development Agency in connection with health care system facilities. It does not relate to wastewater treatment facilities and there does not appear to be an analogous certificate for such facilities. Unless the Committee intends to establish a certificate of need requirement for wastewater treatment plants, reference to a certificate of need should be deleted from this definition. If deleted, the definition of "private" entity should be further amended to comport with the Committee's intent as it relates to wastewater treatment plants.

The term "resource recovery program pursuant to chapter 340A, HRS" is also used in the definition of "private entity" on page 5, line 18. Chapter 340A, however, does not address a "resource recovery program. Instead, it addresses a resource recovery "facility," which means a facility in which solid waste is reprocessed into new products in such manner that original products lose their identity. It is not clear that this narrow definition is appropriate for the apparent purpose of this bill because, for example, it does not appear to address water recovery and re-use, types of uses referred to in section 1 of the bill.

The definition of "transferred facility" on page 6, lines 4-9, does not include the right or responsibility to "design" or "construct" a wastewater treatment facility, although a "private entity," appears to have a right to "design" and "construct." We recommend that to be consistent with the authority provided in section 340B-B(a), the words "design" and "construct" be added to this definition.

The newly proposed section 340B-B(a), at page 6, line 10, through page 7, line 5, provides that "the mayor, or county directors of wastewater treatment systems, or their designees, shall negotiate with a private entity or transfer the right and responsibility to manage, operate, design, construct, and implement full scale resource recovery" services . . . to a nonprofit management entity wholly-owned by the private entity. It is unclear whether "or" is a typographical error and should be the word "to," or if this properly reflects the intent of this provision. We are available to assist with amendments to address the Committee's intent in this regard.

Further, it is not clear what "full scale resource recovery services" means as that term is used in section 340B-B(a), page 6, lines 17-18, and page 7, lines 3-4. The term is not defined in chapters 340A or 340B, HRS. Again, the Department is available to assist with suggested wording if so desired.

Section 340B-B(b)(1), page 7, lines 10-11, provides that the negotiated agreement, which includes a transfer and completion date and a plan and schedule for completing the transfer, shall also include "[p]rovisions and deadlines for conducting and completing due diligence." Typically, due diligence occurs before an agreement is entered for a transaction of this nature, and is not therefore addressed in the same agreement as the transfer itself. The Committee might take this into consideration in determining whether to amend this provision.

In section 340B-B(c), page 8, lines 11-18, it is not clear what "maintain administrative oversight" means. Without clarifying what "maintain administrative oversight" entails, this provision appears to conflict with section 340B-D(b)(2), at page 9, line 17, through page 10, line 2, which provides that the transferee entity will have exclusive control of all matters related to the management, operation, and provision of

wastewater treatment services in the leased facilities. These sections should be reconciled to be consistent with each other.

Section 340B-F(a), at page 11, lines 2- 8, references liabilities transferred to the wastewater system upon its creation by Act 262, Session Laws of Hawaii 1996, and liabilities related to collective bargaining contracts negotiated by the State. Act 262 created HHSC and does not appear applicable with respect to wastewater systems. We recommend that this reference be deleted.

Section 340B-G(e), at page 12, line 15, begins with the incomplete phrase "[s]ubject to subsection," The appropriate subsection reference appears to be subsection (c).

Section 340B-H(b)(2), at page 14, lines 1-4, provides for applicable licensing or accreditation with respect to the entity operating a wastewater treatment facility. There are, however, no such licensing or accreditation requirements. Instead, it is the operators (i.e. employees) who must be licensed or accredited. The provision should be deleted or amended to clarify that this requirement pertains to the operators of the facility.

Section 340B-H(b)(7), page 14, line 19, through page 15, line 3, provides that the transferee entity must provide audited financial statements in the same manner described in section 323F-22, HRS. Section 323F-22, HRS, relates to audited financial statements of HHSC. We recommend that this newly proposed part should, instead, have its own stand-alone audit provision that mirrors the applicable parts of section 323F-22, HRS.

In Section 340B-I, the word "Capitol," page 15, line 8, should be changed to "Capital."

Section 3 of this bill, page 17, lines 1-9, amends section 89-8.5, HRS, which addresses the HHSC. The provision should either be amended to address the wastewater treatment transaction contemplated by this measure or the intent of the Committee should be addressed in a stand-alone measure pertaining to the wastewater treatment transaction. The Committee might also consider deleting the amendments on page 17, lines 9-12, as unnecessary. The parties would not be able to negotiate

amendments to a bargaining agreement that affects nonparties, and if anything needs to be addressed between the parties to the wastewater treatment facility transaction, that kind of agreement is typically handled by a separate agreement.

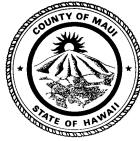
Thank you for the opportunity to share these comments.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura




Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

February 7, 2021

TO: Honorable Nicole E. Lowen, Chair
House Committee on Energy and Environmental Protection

FROM: Alice L. Lee
Council Chair 

DATE: February 8, 2021

SUBJECT: **SUPPORT OF HB 1317, RELATING TO ENVIRONMENTAL MANAGEMENT**

Thank you for the opportunity to testify in **SUPPORT** of this important measure. The purpose of this measure is to allow county governments to enter into private-public partnerships for the services and transferring, or joint venturing of one or more of their wastewater treatment facilities to a private entity, or its wholly owned nonprofit management entity, for the delivery of those services.

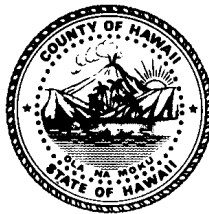
The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I SUPPORT this measure for the following reasons:

1. The measure provides the County additional options for operating wastewater treatment facilities.
2. I am open to new, creative ways to solve Maui County's wastewater treatment facility problems.
3. Often, public-private partnerships allow the counties to provide exceptional service to the public while also saving taxpayer dollars.

For the foregoing reasons, I **SUPPORT** this measure.

Holeka Goro Inaba
Council Member, District 8, N. Kona



Office: (808) 323-4280
Email: holeka.inaba@hawaiicounty.gov

HAWAI'I COUNTY COUNCIL

County of Hawai'i
West Hawai'i Civic Center, Bldg. A
74-5044 Ane Keohokalole Hwy.
Kailua-Kona, Hawai'i 96740

January 5, 2021

House Committee on Energy & Environmental Protection
Representative Nicole E. Lowen, Chair
Representative Lisa Marten, Vice Chair

Dear Chair and Members of the Committee,

Re: Testimony in support of HB1316, Relating to Packaging Waste;
Hearing: February 9, 2020 at 9:00 a.m., Conference Room 325

On behalf of myself and the constituents of Council District 8 in North Kona, I would like to express support for above referenced bill, and submit a brief testimony as follows:

Recycling has placed the burden of plastic waste onto local governments and taxpayers. Producers should internalize the environmental and public health of their products and design better products and systems that reduce waste at the source, and encourage the reuse of more waste materials. We all have a duty to mālama and aloha this 'āina and honua.

This bill will require producers of packaging waste to be responsible for the end-of-life management of their products in a way that ensures minimal social and environmental impacts, and allows the Department of Health to administratively impose civil penalties.

I strongly urge the enactment of HB1316.

Sincerely,

HOLEKA GORO INABA, Council Member
District 8, North Kona



Email: communications@ulupono.com

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Tuesday, February 9, 2021 — 9:00 a.m.

Ulupono Initiative supports the intent of HB 1317, Relating to Environmental Management

Dear Chair Lowen and Members of the Committee:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food; renewable energy and clean transportation; and better management of freshwater and waste.

Ulupono supports the intent of HB 1317, which allows county governments to enter into private-public partnerships for the services and transferring, or joint venturing of one or more of their wastewater treatment facilities to a private entity, or its wholly owned nonprofit management entity, for the delivery of those services.

Ulupono supports the State's efforts to increase diverse renewable energy resources, including the use of wastewater to support the production of renewable natural gas through methane capture, anaerobic digestion, and other technologies. By allowing county governments the ability to seek out private-public partnerships to support wastewater services, the State is providing a critical pathway for local government to upgrade and replace entire wastewater facilities in need of modernization. Private entities not only bring their ability to capitalize such projects, but also the expertise that will support a sustainable future for Hawai'i. While Hawai'i currently only has a single wastewater treatment plant (WWTP) upgraded for renewable natural gas, there are private companies with extensive experience in developing and upgrading WWTP. We believe this legislation will open the doors to more collaboration with such companies and that collaboration can help Hawai'i achieve both water quality and renewable energy goals.

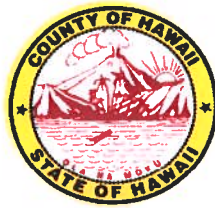
Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs

Investing in a Sustainable Hawai'i

Mitchell D. Roth
Mayor



Lee E. Lord
Managing Director

Robert H. Command
Deputy Managing Director

County of Hawai'i Office of the Mayor

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February 8, 2021

Representative Nicole Lowen, Chair
Representative Lisa Marten, Vice-Chair
House Committee on Energy & Environmental Protection
Hawai'i State Legislature
415 S. Beretania Street
Honolulu, Hawai'i 96813

Subject: H.B. 1317, RELATING TO ENVIRONMENTAL MANAGEMENT
Hearing Date: Tuesday, February 9, 2021
Time/Place of Hearing: 9:00 a.m.

Aloha Chair Lowen:

The County of Hawai'i is expressing its unequivocal support for House Bill 1317 which will allow county governments to enter into private-public partnerships for the services and transferring or joint partnering of waste-water treatment facilities.

Like other counties throughout the state, Hawai'i county is facing the critical need to invest in costly upgrades of its aging waste-water infrastructure, under time sensitive legal conditions with very limited available financial resources. It must also refocus current environmental management practices toward a modern resource recovery model.

This will require state-of-the-art facilities that private entities can develop more economically and effectively than county governments. House Bill 1317 will enable county government to establish public-private partnerships that would create resource recovery systems that are regulatory compliant, and environmentally and financially sound.

On behalf of the County of Hawai'i, I am humbly asking for your committee's utmost consideration and support of this important bill. Please feel free to contact me for any additional information.

Mahalo,

MITCHELL D. ROTH
Mayor
County of Hawai'i



LATE

HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Nicole E. Lowen, Chair
Rep. Lisa Marten, Vice Chair

Tuesday, February 9, 2021, 9:00 AM
Conference Room 225

Re: Testimony in Opposition of HB 1317 - RELATING TO ENVIRONMENTAL MANAGEMENT.

Chair Lowen, Vice Chair Marten, and Members of the Committee on Energy & Environmental Protection:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents 1,500 members in the private sector.

UPW **opposes** HB 1317 which allows county governments to enter into private-public partnerships for the services and transferring, or joint venturing of one or more of their wastewater treatment facilities to a private entity, or its wholly owned nonprofit management entity, for the delivery of those services. UPW opposes initiatives that subsidize or otherwise encourage the sale or lease of public infrastructure to private investors or subsidize or otherwise encourage public-private partnerships that will result in private control or operation of public assets. UPW advocates that investments in improving Hawaii’s infrastructure do not come at the expense of the workers who presently keep it working.

Thank you for the opportunity to submit this testimony.

UNITED PUBLIC WORKERS
AFSCME Local 646, AFL-CIO
Administrator Liz Ho

TEL (808) 847-2631 EMAIL Lho@afscme.org | 426 North School Street, Honolulu, HI 96817



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

LATE

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-First Legislature, State of Hawaii
House of Representatives
Committee on Energy and Environmental Protection

Testimony by
Hawaii Government Employees Association

February 9, 2021

H.B. 1317 – RELATING TO ENVIRONMENTAL MANAGEMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO **strongly opposes the purpose and intent of H.B. 1317** which allows county governments to privatize one or more of their wastewater treatment facilities to a private entity or its wholly owned nonprofit management entity.

H.B. 1317 is a repeat of the privatization of the Maui Region of the Hawaii Health Systems Corporation and clearly follows an identical playbook, but with worse consequence as wastewater treatment facilities are critical utilities that all residents depend upon daily. As written, this measure establishes the framework for any county to transfer the right and responsibility to operate and manage any wastewater treatment and resource recovery services to a private entity, without public notice, input, or consent. This lack of government transparency is deplorable and absolutely unacceptable.

We live in an island state with limited natural resources, therefore we do not dispute the need to incorporate new, emerging resource technologies to produce and use renewable energy, generate gas that can service our communities, create biosolids that can be turned into fertilizer, and reclaim water that can be used for golf courses, agriculture, and landscaping. We are confident that this can be achieved while remaining in regulatory compliance and maintaining financial viability if counties choose to work in true partnership with the private sector, as other local counties are incorporating these new technologies into their municipal systems without relinquishing total control of their operations.

Public employees and your public workforce are not “logistical and structural issues” to surmount, as our local workforce has and will continue to adapt when provided with the proper resources, training, and support. We must invest in the concept that new technology and government are not mutually exclusive and break the habit of mainland private ownership and the selling of our local public assets as the perennial, end-all solution.

We respectfully implore the Legislature and Counties to judiciously complete its due diligence, exhaust every avenue prior, and seek comprehensive public input prior to

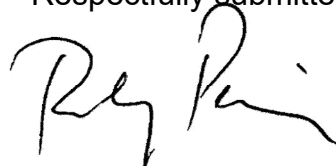
Committee on Energy and Environmental Protection

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February 9, 2021

fracturing and selling a critical government asset. We cannot afford any lesser degree of scrutiny or the potential of a failed experiment when it comes to delivering critical utility services. We remain steadfast that for transparency and accountability, public utilities should remain in the public domain, therefore **we respectfully request that the Committee defer H.B. 1317 and consider alternative resolutions.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy Perreira". The signature is fluid and cursive, with a large initial "R" and a long, sweeping tail.

Randy Perreira
Executive Director

LATE



Feb. 08, 2021

In Support of **HB1317** Relating to Environmental Management
House Committee on Energy & Environmental Protection (EEP)
Feb. 09, 9:00am, Rm. 325 Via Videoconference

Aloha, Chair Lowen, Vice-Chair Marten and Members of the Committee:

On behalf of the non-profit WAI: Wastewater Alternatives & Innovations, I am writing in **support of HB1317**. This bill would allow county governments to enter into private-public partnerships (PPP) for the services or joint venturing of wastewater treatment facilities to a private entity, or its wholly-owned nonprofit management entity, for the delivery of those services. Due to the increasing demand for more efficient and affordable wastewater treatment and the lack of funding for them, especially during the pandemic, we strongly believe these PPP's will create beneficial business opportunities to tackle the wastewater management issue here in Hawai'i.

As a member of the State's Cesspool Conversion Working Group, I believe this bill will create a path for collaboration between the Counties and private companies, workers and the public, to collaborate in introducing innovative financial and technological solutions to our Islands. Hawaii has more than 88,000 cesspools across the state, discharging 53 million gallons of raw sewage each day into Hawaii's waters. That's like a massive sewage spill every day! Hawaii is struggling to deal with this sewage pollution problem and meet the mandate to convert all cesspools by 2050. Most homeowners don't have enough money to convert their individual cesspools, and the Counties are struggling financially as well. But with a PPP, companies like Cambrian Innovation could work with the Counties to provide all the necessary infrastructure, without large upfront capital costs, through their sanitation as a service model (only charging users a small monthly fee).

WAI is dedicated to protecting our waters and near-shore ecosystems by reducing sewage pollution from cesspools and failing septic systems. Our goal is to help communities and homeowners find more innovative, affordable, and eco-friendly solutions to wastewater management. Better sanitation systems reduce sewage pollution and make properties more valuable, while also protecting our groundwater, streams, and the health of our coral reefs and coastal areas. By allowing these PPP's, the state will encourage the counties and technology companies to partner and find affordable solutions, as well as opportunities to grow our economy.

This bill creates a path for public-private partnerships and also protects all parties involved in the process. Unlike the case of Konno-Vs-County of Hawaii, this legislation includes protection of workers and affords them the right to fair and just wages and benefits, while also helping the State and Counties provide better services to Hawaii's people. Additionally, it allows for operating support and capital project support to provide funds to these partnership transfers and projects. This bill will allow for the development of new partnerships that can help us tackle the problems of cesspools and wastewater management. Mahalo for your leadership on this issue and support of this bill. Please let me know if you have any questions.

Aloha,

Stuart H. Coleman

WAI: Wastewater Alternatives & Innovations * 2927 Hibiscus Pl. * Honolulu, HI 96815
808-381-6220 * info@waicleanwater.org * www.WaiCleanWater.org

LATE

HB-1317

Submitted on: 2/8/2021 5:41:12 PM

Testimony for EEP on 2/9/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Arnold Abe	Individual	Oppose	No

Comments:

I strongly oppose allowing the privatization of any County owned wastewater treatment facilities in the State of Hawaii.