

**TESTIMONY**  
**SB 701 SD 2**



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

**SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND  
HAWAIIAN AFFAIRS**

**S.B. 701, S.D. 2 (Proposed), RELATING TO LANDFILLS**

**Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health**

**February 27, 2009  
2:45 P.M.**

1 **Department's Position:** The Department respectfully opposes this bill.

2 **Fiscal Implications:** None

3 **Purpose and Justification:** This bill proposes to prohibit the construction of new landfill units or the  
4 expansion of existing private landfill units in the areas of Nanakuli, Waianae, Maili, Makaha and  
5 Makua, Oahu after August 1, 2009.

6 The Department opposes this measure because we believe that this is a case of home rule. In  
7 general, the counties are responsible for the collection, management, treatment and/or disposal of solid  
8 waste. As such, the City and County of Honolulu, in evaluating available solid waste management  
9 options, should be given the opportunity to evaluate all possibilities, so that they can select the most  
10 appropriate action for their county. However, we are not taking a position now on the City's proposed  
11 expansion of Waimanalo Gulch Landfill, which we understand to be before the Land Use Commission.

12 If the Committee chooses to move this measure forward, we ask that the term "new solid waste  
13 landfill unit" be replaced with a different term and further clarified. HRS 342H and Hawaii  
14 Administrative Rules Chapter 11-58.1, which was promulgated under HRS 342H, already defines the

1 term, "new municipal solid waste landfill (MSWLF) unit." The term used in this measure has a  
2 significantly different definition and may cause conflict and confusion.

3 Thank you for the opportunity to testify on this measure.

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DEPARTMENT OF ENVIRONMENTAL SERVICES  
**CITY AND COUNTY OF HONOLULU**

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DEPUTY DIRECTOR

IN REPLY REFER TO:  
WAS 09-66

February 26, 2009

The Honorable Clayton Hee, Chair  
and Members of the Committee on Water,  
Land, Agriculture and Hawaiian Affairs  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

Subject: Senate Bill 701, SD 1, Proposed SD 2, Relating to Landfills

The City and County of Honolulu's Department of Environmental Services (ENV) reiterates its opposition to Senate Bill 701, SD 1, and the proposed SD 2, which proposes to modify Chapter 342H, HRS, to place a moratorium on the construction of new municipal solid waste (MSW) landfills on the Leeward coast after August 1, 2009.

This measure is an unreasonable interference with home rule. The City and County of Honolulu, as well as the other counties, are responsible for the collection, management, treatment and/or disposal of municipal solid waste within their respective jurisdictions. It is inappropriate for the State of Hawaii to place limits on possible landfill locations on Oahu just as it would be for the State to place similar limitations on locations of landfills in Kauai, Maui, or Hawaii counties. This alone is reason for this bill not to move forward.

Moreover, a moratorium on the construction of new MSW landfills on the Leeward coast of Oahu is unnecessary, as Mayor Mufi Hannemann has already committed to not site any new MSW landfills on the Leeward coast. This commitment reflects his understanding of many of the issues identified in the proposed SD 2, section 1.

For the record, the Waimanalo Gulch landfill was established 20 years ago and is not located within the five areas specifically identified in the bill.

The bill remains inconsistent in its use of the term "leeward coast". The proposed language for Section 342H is entitled "Leeward coast landfills; moratorium" while it specifically proposes the moratorium only for Nanakuli, Waianae, Maili, Makaha, and Makua. The City and County's Waimanalo Gulch Sanitary Landfill is not located in any of these areas, yet section 1 of the bill continues to state that the Waimanalo Gulch landfill is "located on the leeward coast."

We further object to the unclear definition of the term "solid waste landfill unit". As written, this term potentially impacts the pending expansion of the Waimanalo Gulch Sanitary Landfill which is an essential part of the continuing near term handling of the City and County's solid waste. Any impact to the Waimanalo Gulch expansion would cause severe risk to public health. It is also important to understand that it is physically impossible to site a new landfill in less than five to seven years.

For such reasons, this bill should not be passed. However, were it to move forward, the bill should be amended to remove references to the "leeward coast" and should address instead only the five specified areas. Further, the term "solid waste landfill unit" should be replaced with the term "solid waste landfill" to avoid any confusion of intent. Specifically,

- a. Page 2, lines 9 through 13, should be amended to read:  
"The purpose of this Act is to place a moratorium on the construction of any new landfills or the expansion of any existing private solid waste landfill within the Oahu areas of Nanakuli, Waianae, Maili, Makaha, and Makua on or after August 1, 2009."
- b. Page 2, proposed new section to be added to Chapter 342H should be amended to read: "**§342H-\_\_ Nanakuli, Waianae, Maili, Makaha, and Makua landfills; moratorium.** Any law to the contrary notwithstanding, no person, including any government agency or entity, shall construct or operate a new solid waste landfill, including a municipal solid waste landfill or otherwise, or expand any existing private solid waste landfill, or any component thereof, on or after August 1, 2009, within the Oahu areas of:
  1. Nanakuli;
  2. Waianae;
  3. Maili;
  4. Makaha; and
  5. Makua;

Provided that this section shall not apply to any municipal solid waste landfill existing prior to August 1, 2009, in these areas.

For the purposes of this section, "new solid waste landfill" means any solid waste landfill that has not received waste prior to August 1, 2009."

Further, there should be a specific statement that the proposed moratorium does not apply to the Waimanalo Gulch Sanitary Landfill.

Finally, we note that our testimony to the Committees on Energy and Environment and Transportation, International and Intergovernmental Affairs was in opposition to passage of SB 701. Standing Committee Report No. 357 from those committees indicates that our testimony was only in the nature of "comments". As noted, our testimony was in opposition to this measure.

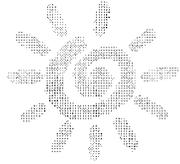
The Honorable Clayton Hee, Chair  
February 26, 2009  
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We firmly believe that this bill is an inappropriate intrusion on the responsibility of the City and County of Honolulu and that the SB 701, SD 1 should not be passed, either in its current form or in the form of the proposed SD 2.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Steinberger', with a large, sweeping flourish extending to the left.

Timothy E. Steinberger, P.E.  
Director



# LIFE OF THE LAND

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## **COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

Sen. Clayton Hee, Chair

Sen. Jill Tokuda, Vice Chair

Friday, February 27, 2009

2:45 PM

Room 229

### **STRONG SUPPORT - SB 701 SD2 - Moratorium on New Leeward Landfills**

Aloha Chair Hee, Vice Chair Tokuda and Members of the Committees!

My name is Kat Brady and I am the Assistant Executive Director of Life of the Land, Hawai`i's own energy, environmental and community action group advocating for the people and `aina for almost four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

SB 701 SD2 places a moratorium on any new municipal solid waste landfill units on the Leeward Coast of O`ahu on or after 8/1/09.

Life of the Land is in strong support of this measure. The Leeward Coast of O`ahu has borne the burden for the majority of public benefit projects from landfills to food waste processing to polluting fossil fuel power plants. In fact, Waimanalo Gulch landfill is one of the tallest structures on O`ahu!

Life of the Land asserts that this over-concentration of public benefit projects is a glaring environmental justice issue. Environmental justice is the social and legal movement devoted to creating fairness and equality for low-income and majority-minority communities that have been disproportionately impacted by the presence of locally unwanted land uses. The concept of "environmental justice" requires "the fair treatment of all races, cultures, incomes and educational levels with require to the development, implementation and enforcement of environmental laws, regulations and polices," with "fair treatment 'implying' that no subgroup of people should be forced to shoulder a disproportionate share of the negative environmental impacts of pollution or environmental hazards due to lack of political or economic strength."

(Source: Owen, Kenneth, Environmental Justice Enforcement Requires Reassessment Under the Equal Protection Clause, Title VI of the Civil Rights Act, and Environmental Statues, 30 Golden Gate L. R. 379, 379 (2000))

Article XI, Section 9 of the Hawai'i State Constitution reads: .

### **ENVIRONMENTAL RIGHTS**

**Section 9.** Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

[Add Const Con 1978 and election Nov 7, 1978]

Hawai'i's environmental laws fall short of the initiatives taken by some other states to relieve some of the burdens placed upon low-income communities by the siting of public benefit projects.

For example, the Arkansas statute states: *"The General Assembly also acknowledges that, while solid waste management facilities are essential, certain types of facilities impose specific burdens on the host community. National trends indicate a tendency to concentrate high impact solid waste disposal facilities in lower-income or minority communities. Such facilities may place an onerous burden on the host community without any reciprocal benefits to local residents. The purpose of this subchapter is to prevent communities from becoming involuntary hosts to a proliferation of high impact solid waste management facilities."*

To make this law substantive, Section 8-6-1504 of the Arkansas environmental justice law creates a rebuttable presumption against the siting of "any high impact solid waste management facility" within twelve miles of any other such facility.

This statute is particularly effective because it does not require a claimant to show any racial or class discrimination; it only requires a plaintiff to show that one facility will be or has been placed within twelve miles of a similar facility. It completely circumvents the burdensome discriminatory intent requirement, thus making it easier for communities to bring environmental injustice claims in state court and successfully have hazardous facilities placed elsewhere.

This Arkansas law is bold and unique, and clearly without a counterpart in the City and County of Honolulu. This lack of legal protection has arguably been the disproportionate siting of undesirable land uses on the Leeward Coast of O'ahu.

Life of the Land is in strong support of SB 701 SD2.

Mahalo for this opportunity to share our thoughts on this important environmental justice measure.

# GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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## MEMORANDUM

**TO:** Senator Clayton Hee  
Chair, Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Hawaii State Capitol, Room 228

**FROM:** Gary M. Slovin

**DATE:** February 26, 2009

**RE:** S.B. No. 701, SD1, Proposed SD2 – Relating to Landfills  
Hearing: Friday, February 27, 2009 at 2:45 p.m., Room 229

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Dear Chair Hee and Members of the Committee:

I am Gary Slovin, testifying on behalf of PVT Land Company, the owner and operator of the PVT Construction and Demolition Landfill (“PVT”) in Nanakuli.

PVT is strongly opposed to SB 701.

As the bill is currently written, because of the nature of the way a landfill like the PVT Landfill has to be operated, it is likely that the landfill would be closed within one year if the bill should pass as it is. The closing of the only construction and demolition landfill on Oahu would have disastrous effects. Nearly every construction firm on Oahu would be affected as they would not have a place to take their construction and demolition debris. For example, the City and County’s rail project would be dramatically affected if it did not have access to the PVT Landfill. Likewise truckers and hauling companies would be affected as well as they would have no location to send construction and demolition materials. It would be very likely that numerous illegal landfills which spring up all over the island with a huge impact to the environment as people would have to find some alternative to dump their waste.

Further, the PVT Landfill is a key component in the County’s disaster planning. If a category 4 hurricane should strike Oahu, it is predicted that over 500,000 cubic yards of trash would be generated almost instantly. The County’s disaster plan calls for this

Senator Clayton Hee  
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material to come to the construction and demolition landfill for sorting of recyclable and reusable material, the sorting out of hazardous waste for proper disposal, and finally disposal of appropriate waste material in the landfill itself. If the PVT Landfill is forced to close it would leave the County with no place to haul this material to remove it from the County's roads, to open the airport, hospitals, fire stations and to get materials moved to a proper facility for handling. Interestingly, the roads leading to the PVT Landfill are among the first roads that need to be opened in the case of a disaster that the landfill is available for disposal of material due to a disaster.

Obviously, the employees who work at the PVT Landfill would also be put out of work.

We realize that landfills are a sensitive issue in any community but they are also a necessary part of the infrastructure of a community. The impact of SB 701 would have disastrous affects on Oahu. For these reasons we strongly oppose SB 701 and ask that the committee hold this bill.

Thank you for the opportunity to testify.

# IRON WORKERS STABILIZATION FUND

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Fax No. - 586-7334

February 26, 2009

Honorable Clayton Hee, Chair  
Senate Committee on Water, Land, Agriculture and Hawaiian Affairs  
State Capitol - Room 228  
Honolulu, Hawai'i 96813

Ironworkers Stabilization Fund - T. George Paris, Executive Managing Director

Hearing Date - February 27, 2009, 2:45 p.m., Room 229

Support of SB 701, Proposed SD 2, Relating to Landfills

The purpose of this bill is to place a moratorium on the construction of any new solid waste landfill units and/or expansion of any existing private solid waste landfill units on the Leeward Coast on or after August 1, 2009.

For the past 18 years, all municipal solid waste (MSW) on Oahu has been deposited at Waimanalo Gulch above Ko Olina on the Leeward Coast. This facility takes in approximately 400,000 tons of MSW yearly. Prior to that, there were various MSW landfills on the Leeward Coast. To compound the burden placed on the residents of the Leeward Coast, all of Oahu's construction and demolition waste, including asbestos, is dumped into the privately-owned PVT landfill that is adjacent to and mauka of Nanakuli town. In addition, an entity named Pineridge operates a concrete/asphalt recycling facility to produce inert fill material, another entity named Bedminster had filed for a MSW compost facility but later withdrew its application, and, still another entity at the Nanakuli "B" site has filed an application for a solid waste landfill.

Recent events only highlight the fact that deleterious materials from "unusual" sources are routinely dumped into PVT without any prior notice to the residents of Nanakuli. A case in point would be the clean-up of a site at Bellows Field that was used as a landfill during the World War II era, containing 8,500 tons of petroleum related materials. Although the print media reported the Bellows Field clean-up, they never asked the Kaneohe Marines and Air Force officials *WHERE* the contaminated materials were to be taken to which should be standard practice. Only after inquiries from Nanakuli residents were made, was it established that the 8,500 tons were indeed dumped into the PVT site.

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Another case in point is the deleterious materials reported to be asbestos that was dug up at an old Waipahu site . Here, again, the media prominently reported the digging at the Waipahu site but did not report where it was to be transported to - PVT in Nanakuli. The media should make it a point to report where all of these deleterious materials are to be deposited.

Besides the obvious health risks that the residents of the Leeward Coast suffer as a result of these 2 landfills and concrete/asphalt recycling facility, they are also negatively impacted by the following: the H-Power plant; significant quantity of abandoned military ordnance; a disproportionately large homeless population; and horrendous traffic problems daily. As to these traffic woes, approximately 400 trucks, many in the semi-tractor trailer category, travel to the PVT landfill and other commercial entities (all mauka and in close proximity to Nanakuli town) each day. It is only logical to assume that near gridlock conditions will occur for all Leeward Coast residents each day if any more landfills are permitted anywhere in Nanakuli, Maili, Waianae, Makaha or Makua.

For the above reasons, we strongly urge that this measure be enacted into law. The residents of the Leeward Coast have suffered disproportionately from the negative environmental concerns generated by these landfills. Enough is enough.

**TESTIMONY**

**SB 701 SD 2**

**(END)**