
A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL MANAGEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the people of the
2 State are entitled to have access to wastewater treatment system
3 facilities that provide affordable, reliable, and sustainable
4 services in their communities. With wastewater being
5 increasingly recognized as a valued source of renewable
6 resources, regulatory agencies are urging wastewater treatment
7 facilities that treat human and animal waste to be viewed as
8 resource recovery facilities that produce water, energy, and
9 nutrients. The Water Environment Federation believes that
10 wastewater treatment plants are not waste disposal facilities,
11 but rather water resource recovery facilities that produce
12 water, energy, and recover nutrients. These facilities have the
13 potential to reduce the nation's dependence on fossil fuels
14 through the production and use of renewable energy. These
15 facilities have the possibility of generating gas that can
16 service communities, biosolids that can be turned into



1 fertilizer, and reclaimed water that can be used for golf
2 courses, agricultural purposes, and landscaping.

3 In 2020, the United States Supreme Court held that
4 wastewater injection wells can be a regulated pollution source
5 under the Clean Water Act in *County of Maui, Hawaii v. Hawaii*
6 *Wildlife Fund*, 140 S.Ct. 1462 (2020). By ruling that these
7 underground wells are "point sources" for pollution, and thus
8 requiring a permit for discharge, this decision will have a
9 significant impact on both public and industrial underground
10 injection wells, as well as municipally owned wastewater
11 facilities. To comply with the ruling, Maui county estimates it
12 will be responsible for \$2,500,000 in upgrades, plus additional
13 civil penalties. These high operational costs are a substantial
14 burden for local governments.

15 The legislature finds that current wastewater systems
16 throughout the State are outdated and require major upgrades and
17 the replacement of entire facilities. Estimated costs for these
18 systems are greater than \$500,000,000 in capital improvement
19 project funds and \$1,000,000,000 in resource recovery systems
20 funding.



1 For these reasons, Hawaii's wastewater treatment systems
2 will require state-of-the-art facilities that private entities,
3 through their experience in resource recovery services,
4 technological expertise, and economies of scale, can provide
5 more economically and effectively than county governments.
6 Aside from the critical financial benefits, residents would
7 benefit from cleaner water, reduced landfilling, increased
8 resilience to climate change, and more sustainable
9 utilization of resources.

10 Throughout Hawaii, county wastewater treatment departments
11 seek to explore public-private partnerships allowed under
12 section 323F-7.6, Hawaii Revised Statutes, including undertaking
13 three formal solicitation efforts to gauge the interest of
14 potential private partners both on a local and national level.
15 However, in *Konno v. County of Hawaii*, 937 P.2d 397 (1997), the
16 Hawaii supreme court held that public landfill worker positions
17 were "civil service" positions governed by merit principles and
18 thus Hawaii county violated civil service statutes and article
19 XVI, section 1, of the Hawaii State Constitution when it
20 privatized its landfill operations. This holding has limited
21 Hawaii county in its ability to establish an effective business



1 model that would create resource recovery systems that are
2 regulatory compliant, and environmentally and financially sound.

3 Hawaii county has begun to evaluate different models of
4 delivery and operation systems for wastewater resource recovery.
5 Potential partners have reservations in working with the Hawaii
6 county in evaluating opportunities without enabling legislation
7 that would address structural issues related to these systems
8 for wastewater resource recovery.

9 The purpose of this Act is to allow county governments to:

10 (1) Enter into private-public partnerships for the
11 services and transferring or joint venturing of one or
12 more of their wastewater treatment facilities to a
13 private entity, or its wholly owned nonprofit
14 management entity, for the delivery of those services;
15 and

16 (2) Transfer the rights and responsibilities to manage,
17 operate, and provide wastewater treatment and resource
18 recovery services in those facilities to one or more
19 private entities or their nonprofit management
20 entities.



1 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new part to be appropriately designated and to read
3 as follows:

4 "PART . PUBLIC-PRIVATE PARTNERSHIPS FOR THE DELIVERY OF
5 WASTEWATER TREATMENT AND RESOURCE RECOVERY SERVICES AT HAWAII
6 WASTEWATER TREATMENT SYSTEM FACILITIES.

7 §46-A Definitions. As used in this part:

8 "Full scale resource recovery services" means service
9 related to the extraction, conversion to energy, separation,
10 preparation, or reprocessing of solid waste into new products
11 including but not limited to clean water, nutrients, fertilizer,
12 and renewable energy from reclaimed resources, such as reused
13 water, renewable energy, gas, and biosolids.

14 "Nonprofit management entity" means a nonprofit
15 organization duly authorized to transact business in the State,
16 the sole shareholder or member of which is the private entity,
17 whose principal purpose is to manage and operate a wastewater
18 treatment facility.

19 "Pre-transfer facility" means a facility of a county's
20 wastewater treatment systems prior to its transformation into a
21 transferred facility.



1 "Private entity" means a business organization duly
2 authorized to transact business in the State that:

3 (1) Possesses a certificate of need provided to the
4 wastewater recovery facility's operator needed to
5 design, construct, maintain, and operate a wastewater
6 treatment plant, and is able to demonstrate the
7 successfulness of the resource recovery facility
8 pursuant to chapter 340A; or

9 (2) Is the sole member of a nonprofit management entity.

10 "Transfer completion date" means the date specified as the
11 any extensions allowed under the terms of the agreement.

12 "Transferred facility" means a wastewater treatment
13 facility within the state of Hawaii for which the right and
14 responsibility to design, construct, manage, operate, and
15 otherwise provide wastewater treatment services at the facility
16 is transferred to a private entity or its nonprofit management
17 entity pursuant to this part.

18 §46-B Transfer of rights and responsibility to manage,
19 operate, and provide wastewater treatment services in a facility
20 of the county's wastewater treatment system to a nonprofit
21 management entity. (a) Notwithstanding any other law to the



1 contrary, the mayor, or county directors of wastewater treatment
2 systems, or their designees, shall negotiate with a private
3 entity to transfer the right and responsibility to manage,
4 operate, design, construct, and implement full scale resource
5 recovery services at one or more facilities of the various
6 county wastewater treatment systems to a nonprofit management
7 entity wholly-owned by the private entity; provided that the
8 private entity shall submit a statement of interest in response
9 to a notice published by the county to submit statements of
10 interest in acquiring the right and responsibility to manage,
11 operate, design, construct, and implement full scale resource
12 recovery services at one or more facilities in the State.

13 (b) Any agreement negotiated by the counties and entered
14 into by the private entity and counties shall, at minimum,
15 include a transfer completion date and a plan and schedule for
16 completing the transfer that includes:

17 (1) Provisions and a deadline to terminate the agreement
18 before a transfer is completed, at the parties'
19 respective option;

20 (2) Provisions for winding down operations at the
21 transferred facility or facilities and for terminating



1 the agreement in the event that the lease entered into
2 is terminated before the lease expires or the private
3 entity or its nonprofit management entity abandons or
4 otherwise discontinues its provision of wastewater
5 management services in a transferred facility; and

6 (3) Provisions to transfer or assign interests in
7 equipment and furnishings, including any leases for
8 the same; accounts receivable; other provider
9 agreements; business and commercial licenses and
10 registrations; intellectual property and goodwill;
11 administrative, financial, and regulatory records and
12 information; or any other interests or property of the
13 county wastewater system facility or facilities to be
14 transferred under this part, that the parties agree to
15 transfer or assign.

16 (c) On and after the transfer completion date for the
17 transfer of one or more facilities of the county wastewater
18 system to a private entity or its nonprofit management entity
19 pursuant to this part, the county shall cease to have any
20 responsibility for or control over the management and operation



1 of the facility or facilities transferred by the agreement
2 pursuant to this part.

3 The county will retain administrative oversight over
4 matters, including but not limited to contracting matters;
5 assurance of full compliance with state and federal mandates;
6 receipt of fines; and oversight of federal labor and performance
7 bonds.

8 **§46-C Approvals required.** Any documents associated with
9 the transfer of a wastewater facility or facilities under this
10 part shall be subject to review by the corporation counsel,
11 director of environmental management, and the director of
12 finance in their capacity to advise the mayor.

13 **§46-D Real property; terms and conditions.** (a) The
14 county shall enter into a fixed-term lease with the private
15 entity or its nonprofit management entity to rent the real
16 property, including all improvements and fixtures on the
17 property, of the wastewater system facility or facilities that
18 are to be transferred to the private entity or its nonprofit
19 management entity under this part.

20 (b) At minimum, the lease shall include the following
21 terms and conditions:



- 1 (1) The lease shall not be terminated other than for good
2 cause and upon a minimum of three hundred sixty-five
3 days prior written notice to ensure that the delivery
4 of wastewater services to the community will not be
5 disrupted;
- 6 (2) During the term of the lease, the private entity or
7 its nonprofit management entity shall have exclusive
8 control of all matters related to the management,
9 operation, and provision of wastewater treatment
10 services in the leased facilities, except as otherwise
11 set forth in the lease and section 46-B;
- 12 (3) The responsibility to oversee the performance of the
13 terms and conditions of the lease by the private
14 entity or its nonprofit management entity shall rest
15 with the county as the custodial caretaker of the real
16 property under section 46-20; and
- 17 (4) The county shall retain ownership of the leased
18 property throughout the term of the lease.

19 **§46-E Transfer or assignment of other business assets.**

20 Provisions to transfer ownership or assign the interest of the
21 county wastewater system in some or all of the equipment and



1 furnishings of the facility or facilities transferred to the
2 private entity or its nonprofit management entity under this
3 part shall be included in the lease entered into under section
4 46-D.

5 **§46-F Liabilities.** (a) The counties shall be responsible
6 for any and all obligations incurred by the facility or
7 facilities to be transferred, prior to the transfer completion
8 date including any accounts payable, accrued paid time off,
9 debt, capital leases, malpractice liabilities, and other
10 obligations incurred before the transfer completion date. Any
11 and all liabilities of the pre-transfer facility that were
12 transferred to the wastewater system, all liabilities of the
13 pre-transfer facility related to collective bargaining contracts
14 negotiated by the State, and the liability for all current
15 outstanding post-employment benefits of the wastewater system
16 shall remain the responsibility of the counties.

17 (b) All liabilities arising out of a transferred
18 facility's management and operation in a transferred facility,
19 on or after the transfer completion date, shall be the
20 responsibility of the private entity or its nonprofit management
21 entity.



1 **§46-G Employment, wages, and benefits.** (a) The county
2 and the unions representing employees of the pre-transfer
3 facility or facilities shall meet to discuss the impact of a
4 transfer on the employees and the feasibility of tempering the
5 adverse effect of layoffs by amending the employees' collective
6 bargaining agreements pursuant to section 89-8.5.

7 (b) The employees working at a transferred facility shall
8 be subject to laws and regulations that apply to private sector
9 employees. The employees of a private entity or its nonprofit
10 management entity shall not be governed by state laws that apply
11 to public officers and employees of the county, including but
12 not limited to chapters 76, 89, 89A, and 89C, and any other laws
13 and regulations that govern public or government employment in
14 the State.

15 (c) The private entity or its nonprofit management entity
16 shall offer all employees of the pre-transfer facility,
17 employment for a period of , after the transfer completed
18 date.

19 (d) No employee of the county who is separated from
20 service as a result of implementation of an agreement and



1 transfer under this part shall suffer any loss of any previously
2 earned rights, benefits, or privileges.

3 (e) Subject to subsection (c), the private entity or its
4 nonprofit management entity shall take all reasonable steps
5 necessary to provide for the efficient transition of employees
6 from county employment to employment by the private entity or
7 its nonprofit management entity at a transferred facility.

8 **§46-H Operating support.** (a) The private entity or its
9 nonprofit management entity to which one or more of the
10 facilities of the county wastewater system has been transferred
11 pursuant to this part may seek funds from the county for
12 operating costs as defined in section 37-62, of a transferred
13 facility by preparing a budgetary request in accordance with
14 procedures and criteria established by the director of finance.
15 In no event shall the amount requested exceed the amount
16 appropriated for the operating costs of the wastewater system
17 facility or facilities. The director of finance shall review
18 the request and may include some or all the amount requested in
19 the administrative budget of the department of environmental
20 management. Any appropriation made in response to the request



1 shall be subject to the allotment system generally applicable to
2 all appropriations made by the county.

3 (b) To qualify to request funds from the county under this
4 section, the private entity or its nonprofit management entity
5 to which one or more of the facilities of the county wastewater
6 system has been transferred pursuant to this part shall satisfy
7 the following standards and conditions:

- 8 (1) Be duly authorized to transact business in the State,
9 and determined and designated to be a nonprofit
10 organization by the Internal Revenue Service;
- 11 (2) Require its resource recovery facility operators to
12 meet licensing and accredited requirements, in
13 accordance with federal, state, or county statutes,
14 rules, or ordinances, to conduct the activities for
15 which funding is sought;
- 16 (3) Have a governing board whose members have no material
17 conflict of interest and serve without compensation;
- 18 (4) Have bylaws or policies that describe the manner in
19 which business is conducted, prohibit nepotism, and
20 provide for the management of potential conflict of
21 interest situations;



- 1 (5) Be in compliance with all county and state
2 requirements with respect to the transferred facility
3 and any other facility it operates;
- 4 (6) Submit tax clearances from the director of taxation
5 and the Internal Revenue Service to the effect that:
- 6 (A) All tax returns due have been filed and all
7 taxes, interest, and penalties levied or accrued
8 against have been paid;
- 9 (B) The entity or nonprofit is in good standing under
10 a plan in which delinquent taxes, interest, and
11 penalties are being paid to the department of
12 taxation or the Internal Revenue Service, if
13 applicable in installments; or
- 14 (C) The validity of any outstanding taxes, penalties,
15 or interest is being contested in an
16 administrative or judicial appeal with the
17 department of taxation or Internal Revenue
18 Service.
- 19 The department shall have the authority to mandate the
20 electronic filing of the tax clearance application;
21 and



1 (7) Submit its annual budget with respect to a transferred
2 facility to the counties for review no later than
3 thirty days before the mayors of the county submits
4 their annual budget to the council.

5 **§46-I Annual audit and report; disclosure of revenue**
6 **projections; internal performance audit.** (a) The private
7 entity or its nonprofit management entity to which one or more
8 of the facilities of the county wastewater system has been
9 transferred to shall engage a certified public accountant to
10 conduct an annual audit of its financial affairs, books, and
11 records in accordance with generally accepted accounting
12 principles. The private entity or its nonprofit management
13 entity may retain an audit firm to conduct an independent audit
14 of the entity. Each private entity or its nonprofit management
15 entity must submit to the governor and the legislature, within
16 one hundred fifty days after the close of its fiscal year that
17 shall include the audited financial report.

18 (b) In addition to the submittal of the audit required
19 under subsection (a), the private entity or its nonprofit
20 management entity shall submit a report to the legislature at



1 least twenty days prior to the convening of each regular session
2 that shall include, but not be limited to:

3 (1) The projected revenues for each private entity or its
4 nonprofit management entity; and

5 (2) A list of all proposed capital improvement projects
6 planned for implementation during the following fiscal
7 year.

8 (c) There shall be an annual internal audit of the
9 management and operations of the private entity or nonprofit
10 management entity. The private entity or nonprofit management
11 entity shall submit a report to the legislature at least twenty
12 days prior to the convening of each regular session on the
13 results of the annual internal audit of the management and
14 operations of the private entity or nonprofit management entity.

15 **§46-J Capital project support.** (a) Without regard to
16 chapter 42F, the private entity to which one or more of the
17 facilities of the wastewater system has been transferred
18 pursuant to this part may seek funds from the county for capital
19 expenditures, as that term is defined in section 37-62, for a
20 transferred facility for each or all of the first years of
21 the lease entered into under section 46-D. Each year's request



1 for funds shall be submitted to the director of finance in
2 accordance with procedures and criteria established by the
3 director and shall be reviewed by the director and comptroller
4 with pertinent capital planning and expenditure documents and
5 the capital planning procedures supplied by the private entity
6 or its nonprofit management entity. The director of finance may
7 include some or all funds requested in the executive budget.
8 Any appropriation made in response to a request shall be subject
9 to the allotment system generally applicable to all
10 appropriations made by the legislature. The county department
11 of finance shall be responsible for transferring the funds
12 allotted to the private entity or its nonprofit management
13 entity for expenditure.

14 (b) After the first years of the lease entered into
15 under section 46-D, the nonprofit management entity and the
16 private entity shall be responsible for funding all capital
17 expenditures of the transferred facility.

18 **§46-K Strategic commitment during term of lease.** (a) The
19 private entity shall be committed to supporting the nonprofit
20 management entity and any transferred facility that seeks to
21 improve its performance.



1 (b) The private entity and the nonprofit management entity
2 shall apply efficiencies of scale, consolidation of shared
3 services, and administrative and technological expertise to
4 improve the wastewater treatment performance of a transferred
5 facility or facilities."

6 SECTION 3. Section 89-8.5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§89-8.5 Negotiating authority; Hawaii health systems
9 corporation[-]; counties. Notwithstanding any law to the
10 contrary, including section 89-6(d), the counties, the Hawaii
11 health systems corporation, or any of the regional boards, as a
12 sole employer negotiator, may negotiate with the exclusive
13 representative of any appropriate bargaining unit and execute
14 memorandums of understanding for employees under its control to
15 alter any existing or new collective bargaining agreement on any
16 item or items subject to section 89-9."

17 SECTION 4. Section 340A-1, Hawaii Revised Statutes, is
18 amended by adding the definition of "resource recovery facility"
19 to read as follows:

20 ""Resource recovery facility" means a facility in which
21 solid waste is extracted, converted to energy, or otherwise



1 separated, prepared or reprocessed for use into new products
2 including but not limited to clean water, nutrients, fertilizer,
3 renewable energy, gas, and biosolids in such manner that
4 original products lose their identity."

5 SECTION 5. The governor shall inform the president of the
6 senate and the speaker of the house of representatives of the
7 transfer completion date specified in each agreement negotiated
8 and entered into pursuant to chapter 46, part , Hawaii
9 Revised Statutes, by sending the president and the speaker each
10 a copy of each fully executed agreement.

11 SECTION 6. In codifying the new sections added by section
12 2 of this Act, the revisor of statutes shall substitute
13 appropriate section numbers for the letters used in designating
14 the new sections in this Act.

15 SECTION 7. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect upon its approval;
18 provided that the amendment to section 89-8.5 in section 3 of
19 this Act shall be repealed one year after the transfer
20 completion date specified in an agreement negotiated and entered
21 into under chapter 46, part , Hawaii Revised Statutes, and



1 section 89-8.5, Hawaii Revised Statutes, shall be reenacted in
2 the form in which it read on the day prior to the effective date
3 of this Act.



Report Title:

Environmental Management; County Wastewater Treatment Facilities

Description:

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. (SD1)

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