

JAN 26 2022

A BILL FOR AN ACT

RELATING TO WASTEWATER TREATMENT FACILITIES.

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

1 SECTION 1. The legislature finds that neglecting to create
2 the conditions necessary for the maintenance of critical public
3 health infrastructure constitutes gross negligence when it is
4 known to all parties responsible for creating those conditions
5 that catastrophic failure of such infrastructure is imminent.

6 In addition to averting public health threats, the
7 replacement of aging infrastructure affords opportunities to
8 take advantage of technological advancements that increase the
9 efficiency and public benefit derived from the facilities that
10 make up this infrastructure.

11 Wastewater treatment plants are increasingly recognized as
12 a valued source of water, energy, and nutrients that can be used
13 to help municipalities meet their sustainable development goals,
14 and, for this reason, Hawaii county wastewater treatment
15 departments seek to explore opportunities to take advantage of
16 state-of-the-art technologies that provide resource recovery
17 functions. Because such functions have not been customarily and



1 traditionally included in Hawaii's wastewater treatment
2 infrastructure, legal questions regarding who can operate these
3 state-of-the-art facilities arise in ways that impede the
4 exploration process and prevent the establishment of effective
5 business models that would allow for the development of
6 regulatory compliant, and environmentally and financially sound
7 resource recovery systems.

8 The legislature further finds that it is not necessary to
9 institute a broad systemic change in the way critical public
10 health infrastructure is built or operated in order to create
11 the conditions necessary for the proper maintenance or optimized
12 replacement of that infrastructure. Strong unions foster a
13 vibrant middle class by setting standards that improve wages and
14 benefits for all workers, reduce racial and gender disparities,
15 and provide a level of economic resiliency that allows Hawaii's
16 economy to weather disruptions like those created by the ongoing
17 coronavirus disease 2019 (COVID-19) pandemic. For these
18 reasons, the legislature recognizes that it is in the best
19 interests of the State and its citizens to preserve unionized
20 civil service jobs and seek ways to uphold, rather than



1 undermine, the *Konno v. County of Hawaii*, 937 P.2d 397 (1997)
2 decision.

3 In order to fulfill its duty to protect the environment,
4 economy and public health while also fulfilling its obligation
5 to protect jobs customarily and traditionally performed by civil
6 servants, the legislature has the power to establish exemptions
7 that allow the State and its counties the flexibility they need
8 to act quickly in addressing imminent threats from failing
9 infrastructure through the use of novel technologies and
10 approaches.

11 The legislature finally finds that protection of jobs
12 customarily and traditionally performed by civil servants
13 requires that the exclusive representative of appropriate
14 collective bargaining units must be included in the negotiation
15 of private contracts. Existing county employees impacted by
16 private contracts must be provided with the opportunity to be
17 retrained for a different position or reassigned if their
18 position becomes obsolete, and no employee of the county who is
19 separated from service as a result of implementation of a
20 private contract for wastewater facility development should



1 suffer any loss of any previously earned rights, benefits, or
2 privileges.

3 Therefore, the purpose of this Act is to:

4 (1) Establish a set of criteria by which the director of
5 the county agency having jurisdiction over wastewater
6 management can determine that catastrophic failure of
7 existing wastewater treatment facilities is imminent;

8 (2) Authorize each county to negotiate with private
9 entities to fund, design, build, and operate new
10 wastewater treatment and resource recovery facilities
11 when catastrophic failure of existing wastewater
12 treatment facilities is imminent;

13 (3) Allow each county to contract certain services in
14 cases where those services are urgently needed to
15 prevent the catastrophic failure of existing
16 wastewater treatment facilities; and

17 (4) Amend the definition of "resource recovery facility"
18 for purposes of chapter 340A, Hawaii Revised Statutes,
19 to expressly encompass other resources that a county
20 may desire such as, reusable water and recoverable
21 gas.



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- Definitions. As used in this part:

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

10 (1) Possesses a certificate of need provided to the
11 wastewater recovery facility's operator needed to
12 design, construct, maintain, and operate a wastewater
13 treatment plant, and is able to demonstrate the
14 successfulness of the resource recovery facility
15 pursuant to chapter 340A; or

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

17 "Resource recovery facility" shall have the same meaning as
18 defined in section 340A-1.

19 §46- Contracts for wastewater management.

20 Notwithstanding any other law to the contrary, a county may
21 contract with a private entity to design, build, and operate a



1 wastewater treatment facility as a replacement for an existing
2 facility established under chapter 48E as a public undertaking;
3 provided that the director of the county agency having
4 jurisdiction over wastewater management has:

- 5 (1) Determined through an assessment conducted by an
6 independent third-party professional engineer
7 certified in the State, that fifty per cent of the
8 assets of the existing facility have reached a
9 condition that there is no redundancy and receives a
10 D-grade or greater level of failure;
- 11 (2) Determined that the failure of the existing facility
12 poses imminent harm to the public health and
13 environment; and
- 14 (3) Determined that the cost to replace the existing
15 facility exceeds twenty-five per cent of the county's
16 budget.

17 §46- Experimental modernization projects; wastewater
18 treatment and resource recovery facilities. (a) It is the
19 intent of this section to encourage and facilitate the addition
20 of resource extraction and recovery functions to new wastewater
21 treatment facilities.



1 (b) Prior to the implementation of any project pursuant to
2 this section, the director shall develop an assessment
3 identifying the purpose, scope, duration, and public benefit of
4 the project.

5 (c) While the project is in development, the project shall
6 not be limited by state or county personnel laws and rules but
7 shall be in compliance with all equal employment opportunity
8 laws, laws prohibiting discrimination, and chapter 89.

9 (d) If necessary, the director shall consult and negotiate
10 with the exclusive representative of appropriate collective bar-
11 gaining units if a modification or waiver of any provision in a
12 collective bargaining agreement, including any new provision, is
13 necessary to manage or operate the project once the project is
14 implemented.

15 (e) No employee of the county who is separated from
16 service as a result of implementation of an agreement under this
17 part shall suffer any loss of any previously earned rights,
18 benefits, or privileges.

19 (f) The private entity contracted for these services shall
20 take all reasonable steps necessary to provide for the efficient



1 transition of employees from county employment to employment by
2 the private entity.

3 (g) Any agreement between the director and an exclusive
4 representative of appropriate collective bargaining units
5 engaged in the management and operation of a project pursuant to
6 this section, including any modification, waiver, or new
7 provision of a collective bargaining agreement, shall be
8 mutually agreed to in writing before the project is implemented.

9 (h) As used in this section, "director" means the director
10 of a county agency having jurisdiction over wastewater and solid
11 waste management."

12 SECTION 3. Section 340A-1, Hawaii Revised Statutes, is
13 amended by amending the definition of "resource recovery
14 facility" to read as follows:

15 "Resource recovery facility" means a facility in which
16 solid waste is extracted, converted to energy, or otherwise
17 separate, prepared, or reprocessed for use into new products,
18 including but not limited to clean water, nutrients, fertilizer,
19 renewable energy, gas, and bioshields, in such manner that
20 original products lose their identity."

21 SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Jan Acasio



S.B. NO. 3362

Report Title:

Wastewater Treatment Facilities; Private-Public Partnerships;
Environmental Management

Description:

Establishes criteria by which a county director of wastewater treatment systems can determine catastrophic failure of existing wastewater treatment facilities. Authorizes county governments to enter into private-public partnerships to fund, design, build, and operate new wastewater treatment and resource recovery facilities in the event of catastrophic failure. Allows each county to contract certain services in certain cases to prevent catastrophic failure of existing wastewater treatment facilities. Amends the definition of "resource recovery facility" to encompass other resources such as reusable water or recoverable gas.

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