

JAN 16 2025

A BILL FOR AN ACT

RELATING TO WASTE DISPOSAL FACILITIES.

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

1 SECTION 1. The legislature finds that the search for a new
2 landfill for the city and county of Honolulu cannot be
3 prioritized over the protection of Oahu's freshwater aquifers.
4 In 2021, approximately twenty thousand gallons of jet fuel
5 leaked from the Red Hill bulk fuel storage facility and
6 contaminated the Pearl Harbor-Hickam water system that serves
7 ninety-three thousand military and civilian customers. The leak
8 also affected the Honolulu board of water supply, and the city
9 and county has shut down three wells that supply fourteen
10 million gallons of water a day to urban Honolulu. Today, the
11 Honolulu board of water supply is in search of new wells that
12 can supply urban Honolulu, which may not be ready until 2025.
13 To protect and preserve fresh water, a new landfill cannot be
14 built over a freshwater aquifer.

15 The legislature further finds that prime agricultural land
16 should be protected, preserved, and reserved for agricultural



1 and related uses. Therefore, a new landfill should not be
2 located on those agricultural lands.

3 The legislature further finds that the city and county of
4 Honolulu is required to relocate the Waimanalo Gulch sanitary
5 landfill by 2028. The county's department of environmental
6 services proposed six potential sites upon which to relocate the
7 landfill, and all sites were rejected by the landfill advisory
8 committee because of concerns that locating a landfill above
9 freshwater aquifers may damage the State's water sources.

10 Act 73, Session Laws of Hawaii 2020, prohibited waste or
11 disposal facilities in a conservation district, except in
12 emergency circumstances to mitigate significant risks to public
13 health and safety. Furthermore, the Act requires that there be
14 a one-half mile buffer zone between residences, schools, and
15 hospitals and the construction, modification, or expansion of a
16 waste or disposal facility.

17 The purpose of this Act is to prohibit the construction,
18 modification, or expansion of any waste or disposal facility for
19 hazardous waste or solid waste on land that is near or above a
20 significant aquifer, and to prohibit waste and disposal
21 facilities on land in an agricultural district having soil



1 classified by the land study bureau's detailed land
2 classification as overall (master) productivity rating class A
3 or B.

4 SECTION 2. Section 205-2, Hawaii Revised Statutes, is
5 amended by amending subsection (d) to read as follows:

6 "(d) Agricultural districts shall include:

7 (1) Activities or uses as characterized by the cultivation
8 of crops, crops for bioenergy, orchards, forage, and
9 forestry;

10 (2) Farming activities or uses related to animal husbandry
11 and game and fish propagation;

12 (3) Aquaculture, which means the production of aquatic
13 plant and animal life within ponds and other bodies of
14 water;

15 (4) Wind-generated energy production for public, private,
16 and commercial use;

17 (5) Biofuel production, as described in
18 section 205-4.5(a)(16), for public, private, and
19 commercial use;

20 (6) Solar energy facilities; provided that:



1 (A) This paragraph shall apply only to land with soil
2 classified by the land study bureau's detailed
3 land classification as overall (master)
4 productivity rating class B, C, D, or E; and

5 (B) Solar energy facilities placed within land with
6 soil classified as overall productivity rating
7 class B or C shall not occupy more than ten per
8 cent of the acreage of the parcel, or twenty
9 acres of land, whichever is lesser, unless a
10 special use permit is granted pursuant to
11 section 205-6;

12 (7) Bona fide agricultural services and uses that support
13 the agricultural activities of the fee or leasehold
14 owner of the property and accessory to any of the
15 above activities, regardless of whether conducted on
16 the same premises as the agricultural activities to
17 which they are accessory, including farm dwellings as
18 defined in section 205-4.5(a)(4), employee housing,
19 farm buildings, mills, storage facilities, processing
20 facilities, photovoltaic, biogas, and other
21 small-scale renewable energy systems producing energy



1 solely for use in the agricultural activities of the
2 fee or leasehold owner of the property,
3 agricultural energy facilities as defined in
4 section 205-4.5(a)(17), vehicle and equipment storage
5 areas, and plantation community subdivisions as
6 defined in section 205-4.5(a)(12);

7 (8) Wind machines and wind farms;

8 (9) Small-scale meteorological, air quality, noise, and
9 other scientific and environmental data collection and
10 monitoring facilities occupying less than one-half
11 acre of land; provided that these facilities shall not
12 be used as or equipped for use as living quarters or
13 dwellings;

14 (10) Agricultural parks;

15 (11) Agricultural tourism conducted on a working farm, or a
16 farming operation as defined in section 165-2, for the
17 enjoyment, education, or involvement of visitors;
18 provided that the agricultural tourism activity is
19 accessory and secondary to the principal agricultural
20 use and does not interfere with surrounding farm
21 operations; and provided further that this paragraph



shall apply only to a county that has adopted
ordinances regulating agricultural tourism under
section 205-5;

(12) Agricultural tourism activities, including overnight
accommodations of twenty-one days or less, for any one
stay within a county; provided that this paragraph
shall apply only to a county that includes at least
three islands and has adopted ordinances regulating
agricultural tourism activities pursuant to
section 205-5; provided further that the agricultural
tourism activities coexist with a bona fide
agricultural activity. For the purposes of this
paragraph, "bona fide agricultural activity" means a
farming operation as defined in section 165-2;

(13) Open area recreational facilities;

(14) Geothermal resources exploration and geothermal
resources development, as defined under section 182-1;

(15) Agricultural-based commercial operations registered in
Hawaii, including:

(A) A roadside stand that is not an enclosed
structure, owned and operated by a producer for



1 the display and sale of agricultural products
2 grown in Hawaii and value-added products that
3 were produced using agricultural products grown
4 in Hawaii;

5 (B) Retail activities in an enclosed structure owned
6 and operated by a producer for the display and
7 sale of agricultural products grown in Hawaii,
8 value-added products that were produced using
9 agricultural products grown in Hawaii, logo items
10 related to the producer's agricultural
11 operations, and other food items;

12 (C) A retail food establishment owned and operated by
13 a producer and permitted under chapter 11-50,
14 Hawaii administrative rules, that prepares and
15 serves food at retail using products grown in
16 Hawaii and value-added products that were
17 produced using agricultural products grown in
18 Hawaii;

19 (D) A farmers' market, which is an outdoor market
20 limited to producers selling agricultural
21 products grown in Hawaii and value-added products



1 that were produced using agricultural products
2 grown in Hawaii; and

3 (E) A food hub, which is a facility that may contain
4 a commercial kitchen and provides for the
5 storage, processing, distribution, and sale of
6 agricultural products grown in Hawaii and
7 value-added products that were produced using
8 agricultural products grown in Hawaii.

9 The owner of an agricultural-based commercial
10 operation shall certify, upon request of an officer or
11 agent charged with enforcement of this chapter under
12 section 205-12, that the agricultural products
13 displayed or sold by the operation meet the
14 requirements of this paragraph;

15 (16) Hydroelectric facilities as described in
16 section 205-4.5(a)(23); and

17 (17) Composting and co-composting operations; provided that
18 operations that process their own green waste and do
19 not require permits from the department of health
20 shall use the finished composting product only on the



1 operation's own premises to minimize the potential
2 spread of invasive species.

3 Agricultural districts shall not include golf courses and golf
4 driving ranges, except as provided in section 205-4.5(d). With
5 respect to land that is within the agricultural district and has
6 soil classified by the land study bureau's detailed land
7 classification as overall (master) productivity rating class A
8 or B, agricultural districts shall not include waste or disposal
9 facilities as defined in section 183C-4. Agricultural districts
10 include areas that are not used for, or that are not suited to,
11 agricultural and ancillary activities by reason of topography,
12 soils, and other related characteristics."

13 SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) Uses not expressly permitted in subsection (a) shall
16 be prohibited, except the uses permitted as provided in
17 sections 205-6 and 205-8, and construction of single-family
18 dwellings on lots existing before June 4, 1976. Waste or
19 disposal facilities as defined in section 183C-4 are not
20 permitted uses of land that is within the agricultural district
21 and has soil classified by the land study bureau's detailed land



1 classification as overall (master) productivity rating class A
2 or B. Any other law to the contrary notwithstanding, no
3 subdivision of land within the agricultural district with soil
4 classified by the land study bureau's detailed land
5 classification as overall (master) productivity rating class A
6 or B shall be approved by a county unless those A and B lands
7 within the subdivision are made subject to the restriction on
8 uses as prescribed in this section and to the condition that the
9 uses shall be primarily in pursuit of an agricultural activity.

10 Any deed, lease, agreement of sale, mortgage, or other
11 instrument of conveyance covering any land within the
12 agricultural subdivision shall expressly contain the restriction
13 on uses and the condition, as prescribed in this section that
14 these restrictions and conditions shall be encumbrances running
15 with the land until such time that the land is reclassified to a
16 land use district other than agricultural district.

17 If the foregoing requirement of encumbrances running with
18 the land jeopardizes the owner or lessee in obtaining mortgage
19 financing from any of the mortgage lending agencies set forth in
20 the following paragraph, and the requirement is the sole reason
21 for failure to obtain mortgage financing, then the requirement



1 of encumbrances shall, insofar as such mortgage financing is
2 jeopardized, be conditionally waived by the appropriate county
3 enforcement officer; provided that the conditional waiver shall
4 become effective only in the event that the property is
5 subjected to foreclosure proceedings by the mortgage lender.

6 The mortgage lending agencies referred to in the preceding
7 paragraph are the Federal Housing Administration, Federal
8 National Mortgage Association, Department of Veterans Affairs,
9 Small Business Administration, United States Department of
10 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate
11 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any
12 other federal, state, or private mortgage lending agency
13 qualified to do business in Hawaii, and their respective
14 successors and assigns."

15 SECTION 4. Section 342H-52, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§342H-52 Prohibitions; buffer zones.** (a) No person,
18 including any federal agency, the State, or any county, shall
19 construct, operate, modify, expand, or close a municipal solid
20 waste landfill unit, or any component of a municipal solid waste
21 landfill unit, without first obtaining a permit from the



1 director. All permits for municipal solid waste landfill units
2 shall be subject to any terms and conditions that the director
3 determines are necessary to protect human health or the
4 environment.

5 (b) No person, including the State or a county, shall
6 construct, modify, or expand a waste or disposal facility,
7 including:

8 (1) A municipal solid waste landfill unit;

9 (2) Any component of a municipal solid waste landfill
10 unit;

11 (3) A construction and demolition unit; or

12 (4) Any component of a construction and demolition
13 landfill unit;

14 for solid waste or hazardous waste on land that is near or above
15 a significant aquifer, as determined by the department, in
16 consultation with the commission on water resource management.

17 For the purposes of this subsection:

18 "Hazardous waste" shall have the same meaning as in
19 section 342J-2.

20 ~~[(b)]~~ (c) No person, including the State or any county,
21 shall construct, modify, or expand a waste or disposal facility



1 including a municipal solid waste landfill unit, any component
2 of a municipal solid waste landfill unit, a construction and
3 demolition landfill unit, or any component of a construction and
4 demolition landfill unit without first establishing a buffer
5 zone of no less than one-half mile around the waste or disposal
6 facility. This subsection shall not apply to the continued
7 operation of an existing waste or disposal facility that is
8 properly permitted; provided that continued operation does not
9 require physical expansion, vertical or horizontal, of the
10 facility requiring additional permitting review and a permit
11 modification.

12 For the purposes of this subsection:

13 "Buffer zone" means the distance between the edge of waste
14 or waste activity and the nearest residential, school, or
15 hospital property line.

16 "Waste or disposal facility" excludes individual, state
17 certified, non-industrial redemption centers."

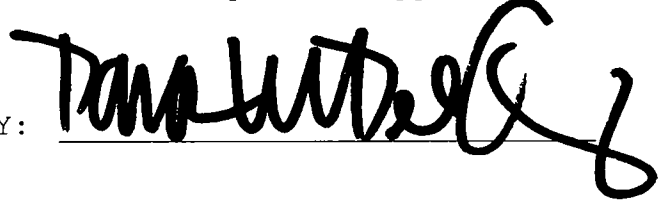
18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

A large, stylized handwritten signature in black ink, appearing to read "Anthony Danz", is written over a horizontal line that follows the text "INTRODUCED BY:". The signature is fluid and cursive, with a long, sweeping tail.



S.B. NO. 438

Report Title:

Waste or Disposal Facilities; Landfills; Solid Waste; Hazardous Waste; Aquifers; Agricultural Districts; Prohibition; DOH; CWRM

Description:

Prohibits the construction, modification, or expansion of any waste or disposal facility for hazardous waste or solid waste on land that is near or above a significant aquifer as determined by the Department of Health, in consultation with the Commission on Water Resource Management; Prohibits waste or disposal facility on class A and B agricultural land.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

