

## ACT 255

H.B. NO. 969

A Bill for an Act Relating to Waste or Disposal Facilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

The legislature further finds that prime agricultural land should be protected, preserved, and reserved for agricultural and related uses. Therefore, a new landfill should not be located on those agricultural lands.

The legislature also finds that the city and county of Honolulu is required to relocate the Waimanalo Gulch sanitary landfill by 2028. The department of environmental services of the city and county of Honolulu proposed six potential sites upon which to relocate the landfill, and all sites were rejected by the landfill advisory committee because of concerns that locating a landfill above freshwater aquifers may damage the State's water sources. Section 183C-4(b), Hawaii Revised Statutes, prohibits waste or disposal facilities in a conservation district, except in emergency circumstances where it may be necessary to mitigate significant risks to public health and safety. Furthermore, section 342H-52(b), Hawaii Revised Statutes, prohibits the construction, modification, or expansion

of a waste or disposal facility within a one-half mile buffer zone between the edge of the waste or waste activity and the nearest residential, school, or hospital property line.

The purpose of this Act is to:

- (1) Prohibit landfill units on land in an agricultural district having soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A in a county with a population greater than five hundred thousand;
- (2) Beginning July 1, 2025, narrow the existing prohibition on the construction, modification, or expansion of waste or disposal facilities within a one-half mile buffer zone of residential, school, or hospital property lines to apply specifically to landfill units or components of landfill units; and
- (3) Beginning July 1, 2025, prohibit the construction, modification, or expansion of a landfill unit, or any component of a landfill unit, inland of an underground injection control line in a county with a population greater than five hundred thousand, with certain exemptions.

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

“(d) Agricultural districts shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind-generated energy production for public, private, and commercial use;
- (5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;
- (6) Solar energy facilities; provided that:
  - (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and
  - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, unless a special use permit is granted pursuant to section 205-6;
- (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, agricultural-energy facilities as defined in section 205-4.5(a)(17), vehicle and equipment storage areas, and plantation community subdivisions as defined in section 205-4.5(a)(12);

- (8) Wind machines and wind farms;
- (9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
- (10) Agricultural parks;
- (11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm 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 the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;
  - (B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer's agricultural operations, and other food items;
  - (C) A retail food establishment owned and operated by a producer and permitted under chapter 11-50, Hawaii administrative rules, that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;
  - (D) A farmers' market, which is an outdoor market limited to producers selling agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii; and
  - (E) A food hub, which is a facility that may contain a commercial kitchen and provides for the storage, processing, distribution, and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.

- The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph;
- (16) Hydroelectric facilities as described in section 205-4.5(a)(23); and
  - (17) Composting and co-composting operations; provided that operations that process their own green waste and do not require permits from the department of health shall use the finished composting product only on the operation's own premises to minimize the potential spread of invasive species.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). No landfill unit, as defined in section 342H-52, shall be located on land within the agricultural district that has soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A in a county with a population greater than five hundred thousand. Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics."

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

"(b) Uses not expressly permitted in subsection (a), including landfill units, as defined in section 342H-52, located on land within the agricultural district that has soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A in a county with a population greater than five hundred thousand, shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless those A and B lands within the subdivision are made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

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

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee in obtaining mortgage financing from any of the mortgage lending agencies set forth in the following paragraph, and the requirement is the sole reason for failure to obtain mortgage financing, then the requirement of encumbrances shall, insofar as ~~[such]~~ the mortgage financing is jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that the conditional waiver shall become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies referred to in the preceding paragraph are the Federal Housing Administration, Federal National Mortgage Association, Department of Veterans Affairs, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Interme-

diate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.”

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

**“§342H-52 Prohibitions; buffer zones.** (a) No person, including any federal agency, the State, or any county, shall construct, operate, modify, expand, or close a municipal solid waste landfill unit, or any component of a municipal solid waste landfill unit, without first obtaining a permit from the director. All permits for municipal solid waste landfill units shall be subject to any terms and conditions that the director determines are necessary to protect human health or the environment.

(b) ~~[No]~~ Beginning July 1, 2025, no person, including the State or any county, shall construct, modify, or expand a ~~[waste or disposal facility including a municipal solid waste landfill unit, any component of a municipal solid waste landfill unit, a construction and demolition landfill unit, or any component of a construction and demolition]~~ landfill unit or component of a landfill unit without first establishing a buffer zone of no less than one-half mile around the ~~[waste or disposal facility]~~ landfill unit or component of a landfill unit. This subsection shall not apply to the continued operation of an existing ~~[waste or disposal facility]~~ landfill unit or component of a landfill unit that is properly permitted; provided that continued operation does not require physical expansion, vertical or horizontal, of the ~~[facility]~~ landfill unit or component of a landfill unit requiring additional permitting review and a permit modification.

~~[For the purposes of this subsection:~~

~~“Buffer zone” means the distance between the edge of waste or waste activity and the nearest residential, school, or hospital property line.~~

~~“Waste or disposal facility” excludes individual, state-certified, non-industrial redemption centers.]~~

(c) Beginning July 1, 2025, no person, including the State or any county, shall construct, modify, or expand a landfill unit or any component of a landfill unit inland of an underground injection control line in a county with a population greater than five hundred thousand. This subsection shall not apply to the continued operation of an existing landfill unit or any component of a landfill unit that is properly permitted; provided that continued operation does not require physical expansion, vertical or horizontal, of the landfill unit or component of a landfill unit requiring additional permitting review and a permit modification.

~~(d) For the purposes of this section:~~

~~“Buffer zone” means the distance between the edge of the landfill unit or component of the landfill unit and the nearest residential, school, or hospital property line.~~

~~“Landfill unit” means a municipal solid waste landfill unit or a construction and demolition landfill unit.~~

~~“Underground injection control line” means the line determined by the department under rules adopted or regulations promulgated pursuant to section 340E-2.”~~

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

SECTION 6. This Act shall take effect on July 1, 2025.

(Approved July 1, 2025.)