



**GOV. MSG. NO. 1109**

**EXECUTIVE CHAMBERS  
HONOLULU**

**DAVID Y. IGE  
GOVERNOR**

**APR 21 2022**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Thirty-First State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirty-First State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on **APR 21 2022**, the following bill was signed into law:

**HB2147 HD1**

**RELATING TO MUNICIPAL SOLID WASTE  
LANDFILL PERMITS.  
ACT 009**

Sincerely,

A handwritten signature in black ink, appearing to read "David Y. Ige".

**DAVID Y. IGE**  
Governor, State of Hawai'i

HOUSE OF REPRESENTATIVES  
THIRTY-FIRST LEGISLATURE, 2022  
STATE OF HAWAIIH.B. NO. 2147  
H.D. 1

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## A BILL FOR AN ACT

RELATING TO MUNICIPAL SOLID WASTE LANDFILL PERMITS.

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

1       SECTION 1. Act 73, Session Laws of Hawaii 2020, deleted  
2       the phrase, "any federal agency," from the entities included in  
3       the term "person" under section 342H-52, Hawaii Revised  
4       Statutes, in defining "person." The legislative intent, as  
5       described in Standing Committee Report No. 1273-20, was for  
6       "[m]aking inapplicable to federal agencies the prohibition on  
7       construction, operation, modification, expansion, or closure of  
8       a municipal solid waste landfill unit without first obtaining a  
9       permit from the Director of Health". However, section 342H-1,  
10      Hawaii Revised Statutes, defines "person" to mean "any  
11      individual, partnership, firm, association, public or private  
12      corporation, federal agency, the State or any of its political  
13      subdivisions, trust, estate, or any other legal entity". Thus,  
14      at a minimum, there is a conflict between the plain language of  
15      the law and the intent.

16      More importantly, as confirmed by the United States  
17      Environmental Protection Agency in a letter signed April 19,



1 2021, "the removal of the [Hawaii Department of Health's]  
2 authority to issue permits to federal agency municipal solid  
3 waste landfills appears to place the State in non-compliance  
4 with the Resource Conservation and Recovery Act, section 4005(c)  
5 codified in 42 United States Code, section 6945, Code of Federal  
6 Regulations section 239.6(e), which require that states adopt  
7 and implement permit programs that assure each solid waste  
8 management facility within their state obtains a permit and  
9 complies with the applicable criteria".

10 As stated in title 40 Code of Federal Regulations section  
11 239.13, "Criteria and procedures for withdrawal of determination  
12 of adequacy", states, "(a) The Regional Administrator [of the  
13 U.S. Environmental Protection Agency] may initiate withdrawal of  
14 a determination of adequacy when the Regional Administrator has  
15 reason to believe that: (1) A state no longer has an adequate  
16 permit program; or (2) The state no longer has adequate  
17 authority to administer and enforce an approved program in  
18 accordance with this part."

19 The removal of the Department of Health's authority to  
20 permit federal municipal solid waste landfills not only removes  
21 regulatory oversight of the design, construction, and operation



1 of federal municipal solid waste landfills, but creates the loss  
2 of an approved municipal solid waste landfill permit program in  
3 accordance with federal regulations. The loss of a federal  
4 approved program will deny other municipal solid waste landfills  
5 in the State, which are currently all owned by the counties, the  
6 ability to design, operate, close, and monitor their landfills  
7 using alternative designs or methods to the federal standards  
8 that could be more suitable for local site conditions and more  
9 cost-effective. For example, federal prescribed liner systems  
10 require a minimum of two feet of soil with a maximum hydraulic  
11 conductivity of 0.0000001 cm/s. However, soil with this type of  
12 permeability on the island of Hawaii is nearly impossible to  
13 find on-island. A geosynthetic alternative to this soil could  
14 be utilized to meet this design standard, but this option would  
15 not be permissible without a state-approved permit program.

16 The purpose of this Act is to reinstate the department of  
17 health's authority to permit federal municipal solid waste  
18 landfills by restoring "any federal agency" to the entities  
19 included in the term "person" in section 342H-52(a), Hawaii  
20 Revised Statutes.



1 SECTION 2. Section 342H-52, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) No person, including any federal agency, the State, or  
4 any county, shall construct, operate, modify, expand, or close a  
5 municipal solid waste landfill unit, or any component of a  
6 municipal solid waste landfill unit, without first obtaining a  
7 permit from the director. All permits for municipal solid waste  
8 landfill units shall be subject to any terms and conditions that  
9 the director determines are necessary to protect human health or  
10 the environment."

11 SECTION 3. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.  
13

APPROVED this 21 day of April, 2022



GOVERNOR OF THE STATE OF HAWAII



HB No. 2147, HD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: March 3, 2022  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki  
Speaker  
House of Representatives




Brian L. Takeshita  
Chief Clerk  
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: **APR 08 2022**  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the Senate of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Ronald D. Kouichi  
President of the Senate



Carol T. Taniguchi  
Clerk of the Senate