

STAND. COM. REP. NO.

333

Honolulu, Hawaii

FEB 18 2021

RE: S.B. No. 997
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committees on Agriculture and Environment and Water and Land, to which was referred S.B. No. 997 entitled:

"A BILL FOR AN ACT RELATING TO ENVIRONMENTAL MANAGEMENT,"

beg leave to report as follows:

The purpose and intent of this measure is to allow county governments to have the ability to enter into private-public partnerships for services and transfer wastewater treatment facility management and operation responsibilities to private entities.

Your Committees received testimony in support of this measure from the Office of the Mayor of the County of Hawai'i, Council Chair of the County of Maui, one councilmember from the Hawai'i County Council, County of Hawai'i Department of Environmental Management, Ulupono Initiative LLC, and one individual. Your Committees received testimony in opposition to this measure from the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; United Public Workers, AFSCME Local 646, AFL-CIO; and two individuals. Your Committees received comments on this measure from the Department of the Attorney General, Department of Budget and Finance, and Department of Taxation.

Your Committees find that the counties are facing the critical need to invest in costly upgrades of its aging wastewater infrastructure, under time sensitive legal conditions with limited



available financial resources and must focus current environmental management practices toward a modern resource recovery model. Current wastewater systems throughout the State are outdated and require major upgrades and the replacement of entire facilities. Estimated costs for these systems are in excess of \$500,000,000 in capital improvement project funds and \$1,000,000,000 in resource recovery systems funding.

For these reasons, Hawaii's wastewater treatment systems will require state-of-the-art facilities that private entities, through their experience in resource recovery services, technological expertise, and economies of scale, can provide more economically and effectively than county governments.

Your Committees further find that throughout Hawaii, county wastewater treatment departments seek to explore public-private partnerships allowed under section 323F-7.6, Hawaii Revised Statutes, including undertaking formal solicitation efforts to gauge the interest of potential private partners both on a local and national level. However, in *Konno v. County of Hawaii*, 937 P.2d 397 (1997), the Hawaii Supreme Court held that public landfill worker positions were "civil service" positions governed by merit principles and thus Hawaii County violated civil service statutes and article XVI, section 1, of the Hawaii State Constitution when it privatized its landfill operations. This holding has limited counties in their ability to establish effective business models that would create resource recovery systems that are regulatory compliant, and environmentally and financially sound.

Your Committees also find that potential partners are hesitant to work with the counties in evaluating opportunities for the delivery and operation systems for wastewater resource recovery without enabling legislation that would address logistical and structural issues related to these systems for wastewater resource recovery. Therefore, this measure seeks to enable county governments to establish public-private partnerships that would create resource recovery systems that are regulatory compliant, and environmentally and financially sound, and provide protection of workers and affords them the right to fair and just wages and benefits.



Your Committees have heard the concerns that this measure would subsidize or otherwise encourage the sale or lease of public infrastructure to private investors or subsidize or otherwise encourage public-private partnerships that will result in private control or operation of public assets.

Your Committees have amended this measure by:

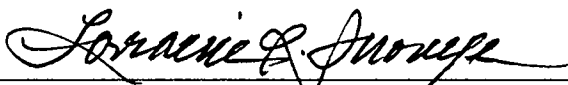
- (1) Placing the new part in chapter 46, Hawaii Revised Statutes, relating to county organization and administration, rather than chapter 340B, Hawaii Revised Statutes, relating to wastewater treatment personnel;
- (2) Defining "full scale resource recovery facilities";
- (3) Providing that the "transferred facility" means a wastewater treatment facility within the State for which the right and responsibility to design, construct, manage, operate, and otherwise provide wastewater treatment services at the facility to be transferred to the private entity or its nonprofit management entity;
- (4) Deleting language that would have required agreements negotiated by the counties and entered into by the private entity and the counties to include provisions and deadlines for conducting and completing due diligence, because due diligence occurs before an agreement is entered for a transaction of this nature and is not therefore addressed in the same agreement of the transfer itself;
- (5) Clarifying what items over which the county will retain administrative oversight;
- (6) Deleting references to Act 262, Session Laws of Hawaii 1996;
- (7) Stating that licensing and accreditation requirements shall apply to the private entity's wastewater operators, not the entity itself;
- (8) Adding additional requirements to expand the submission of tax clearances from the Director of Taxation;



- (9) Providing that the Department of Taxation has authority to mandate the electronic filing of the tax clearance application;
- (10) Establishing annual auditing and reporting, disclosure of revenue projections, and internal performance audit requirements;
- (11) Deleting language that would have required an alteration to a collective bargaining agreement that intrudes beyond the county's jurisdiction to only be effective upon consent of the other jurisdiction;
- (12) Revising the definition of "resource recovery facility" in chapter 340A, Hawaii Revised Statutes, to explicitly encompass other resources the county desires to recover, such as water and gas;
- (13) Removing unintended references to the Hawaiian Health Services Corporation; and
- (14) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Agriculture and Environment and Water and Land that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 997, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 997, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committees on Agriculture and
Environment and Water and Land,



LORRAINE R. INOUE, Chair

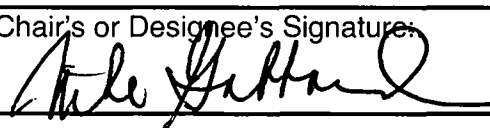


MIKE GABBARD, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i


Record of Votes
Committee on Agriculture and Environment
AEN

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 997	AEN/WTL, JDC	02/12/2021		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
GABBARD, Mike (C)	✓			
NISHIHARA, Clarence K. (VC)	✓			
ACASIO, Laura		✓		
RHOADS, Karl			✓	
FEVELLA, Kurt		✓		
TOTAL	2	2	1	
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

The Senate
Thirty-First Legislature
State of Hawai'i

Record of Votes
Committee on Water and Land
WTL

Bill / Resolution No.:* <i>SB 997</i>	Committee Referral: <i>AEN/WTL, JDC</i>	Date: <i>2-12-2021</i>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
INOUYE, Lorraine R. (C)	✓			
KEITH-AGARAN, Gilbert S.C. (VC)	✓			
MISALUCHA, Bennette E.		✓		
RIVIERE, Gil	✓			
FEVELLA, Kurt			✓	
TOTAL	<i>3</i>	<i>1</i>	<i>1</i>	
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes