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# 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:

18 (1) Prohibit the construction, modification, or expansion  
19 of any waste or disposal facility for hazardous waste  
20 or solid waste on land that is near or above a  
21 significant aquifer;



1  
2 (2) Prohibit waste and disposal facilities on land in an  
3 agricultural district having soil classified by the  
4 land study bureau's detailed land classification as  
5 overall (master) productivity rating class A or B;

6 (3) Prohibit the utilization of fly ash, bottom ash, or a  
7 combination of fly ash and bottom ash from a municipal  
8 waste combustor, including any ash residue that  
9 remains after removal of metals for recycling into new  
10 metal products, for the purposes of road building,  
11 construction, or as alternative daily cover material  
12 on a landfill; and

13 (4) Require fly ash, bottom ash, or a combination of fly  
14 ash and bottom ash from a municipal waste combustor to  
15 be disposed of in a double-lined and duly licensed  
16 municipal solid waste or hazardous waste landfill.

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

19 "(d) Agricultural districts shall include:



- 1 (1) Activities or uses as characterized by the cultivation  
2 of crops, crops for bioenergy, orchards, forage, and  
3 forestry;
- 4 (2) Farming activities or uses related to animal husbandry  
5 and game and fish propagation;
- 6 (3) Aquaculture, which means the production of aquatic  
7 plant and animal life within ponds and other bodies of  
8 water;
- 9 (4) Wind-generated energy production for public, private,  
10 and commercial use;
- 11 (5) Biofuel production, as described in  
12 section 205-4.5(a)(16), for public, private, and  
13 commercial use;
- 14 (6) Solar energy facilities; provided that:
- 15 (A) This paragraph shall apply only to land with soil  
16 classified by the land study bureau's detailed  
17 land classification as overall (master)  
18 productivity rating class B, C, D, or E; and
- 19 (B) Solar energy facilities placed within land with  
20 soil classified as overall productivity rating  
21 class B or C shall not occupy more than ten per



1 cent of the acreage of the parcel, or twenty  
2 acres of land, whichever is lesser, unless a  
3 special use permit is granted pursuant to  
4 section 205-6;

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

21 (8) Wind machines and wind farms;



1 (9) Small-scale meteorological, air quality, noise, and  
2 other scientific and environmental data collection and  
3 monitoring facilities occupying less than one-half  
4 acre of land; provided that these facilities shall not  
5 be used as or equipped for use as living quarters or  
6 dwellings;

7 (10) Agricultural parks;

8 (11) Agricultural tourism conducted on a working farm, or a  
9 farming operation as defined in section 165-2, for the  
10 enjoyment, education, or involvement of visitors;  
11 provided that the agricultural tourism activity is  
12 accessory and secondary to the principal agricultural  
13 use and does not interfere with surrounding farm  
14 operations; and provided further that this paragraph  
15 shall apply only to a county that has adopted  
16 ordinances regulating agricultural tourism under  
17 section 205-5;

18 (12) Agricultural tourism activities, including overnight  
19 accommodations of twenty-one days or less, for any one  
20 stay within a county; provided that this paragraph  
21 shall apply only to a county that includes at least



1 three islands and has adopted ordinances regulating  
2 agricultural tourism activities pursuant to  
3 section 205-5; provided further that the agricultural  
4 tourism activities coexist with a bona fide  
5 agricultural activity. For the purposes of this  
6 paragraph, "bona fide agricultural activity" means a  
7 farming operation as defined in section 165-2;

8 (13) Open area recreational facilities;

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

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

13 (A) A roadside stand that is not an enclosed  
14 structure, owned and operated by a producer for  
15 the display and sale of agricultural products  
16 grown in Hawaii and value-added products that  
17 were produced using agricultural products grown  
18 in Hawaii;

19 (B) Retail activities in an enclosed structure owned  
20 and operated by a producer for the display and  
21 sale of agricultural products grown in Hawaii,



1 value-added products that were produced using  
2 agricultural products grown in Hawaii, logo items  
3 related to the producer's agricultural  
4 operations, and other food items;

5 (C) A retail food establishment owned and operated by  
6 a producer and permitted under chapter 11-50,  
7 Hawaii administrative rules, that prepares and  
8 serves food at retail using products grown in  
9 Hawaii and value-added products that were  
10 produced using agricultural products grown in  
11 Hawaii;

12 (D) A farmers' market, which is an outdoor market  
13 limited to producers selling agricultural  
14 products grown in Hawaii and value-added products  
15 that were produced using agricultural products  
16 grown in Hawaii; and

17 (E) A food hub, which is a facility that may contain  
18 a commercial kitchen and provides for the  
19 storage, processing, distribution, and sale of  
20 agricultural products grown in Hawaii and





1 value-added products that were produced using  
2 agricultural products grown in Hawaii.

3 The owner of an agricultural-based commercial  
4 operation shall certify, upon request of an officer or  
5 agent charged with enforcement of this chapter under  
6 section 205-12, that the agricultural products  
7 displayed or sold by the operation meet the  
8 requirements of this paragraph;

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

11 (17) Composting and co-composting operations; provided that  
12 operations that process their own green waste and do  
13 not require permits from the department of health  
14 shall use the finished composting product only on the  
15 operation's own premises to minimize the potential  
16 spread of invasive species.

17 Agricultural districts shall not include golf courses and golf  
18 driving ranges, except as provided in section 205-4.5(d). With  
19 respect to land that is within the agricultural district and has  
20 soil classified by the land study bureau's detailed land  
21 classification as overall (master) productivity rating class A



1 or B, agricultural districts shall not include waste or disposal  
2 facilities as defined in section 183C-4. Agricultural districts  
3 include areas that are not used for, or that are not suited to,  
4 agricultural and ancillary activities by reason of topography,  
5 soils, and other related characteristics."

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

8 "(b) Uses not expressly permitted in subsection (a) shall  
9 be prohibited, except the uses permitted as provided in  
10 sections 205-6 and 205-8, and construction of single-family  
11 dwellings on lots existing before June 4, 1976. Waste or  
12 disposal facilities as defined in section 183C-4 are not  
13 permitted uses of land that is within the agricultural district  
14 and has soil classified by the land study bureau's detailed land  
15 classification as overall (master) productivity rating class A  
16 or B. Any other law to the contrary notwithstanding, no  
17 subdivision of land within the agricultural district with soil  
18 classified by the land study bureau's detailed land  
19 classification as overall (master) productivity rating class A  
20 or B shall be approved by a county unless those A and B lands  
21 within the subdivision are made subject to the restriction on



1 uses as prescribed in this section and to the condition that the  
2 uses shall be primarily in pursuit of an agricultural activity.

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

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

20 The mortgage lending agencies referred to in the preceding  
21 paragraph are the Federal Housing Administration, Federal



1 National Mortgage Association, Department of Veterans Affairs,  
2 Small Business Administration, United States Department of  
3 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate  
4 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any  
5 other federal, state, or private mortgage lending agency  
6 qualified to do business in Hawaii, and their respective  
7 successors and assigns."

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

10 **"§342H-52 Prohibitions; buffer zones.** (a) No person,  
11 including any federal agency, the State, or any county, shall  
12 construct, operate, modify, expand, or close a municipal solid  
13 waste landfill unit, or any component of a municipal solid waste  
14 landfill unit, without first obtaining a permit from the  
15 director. All permits for municipal solid waste landfill units  
16 shall be subject to any terms and conditions that the director  
17 determines are necessary to protect human health or the  
18 environment.

19 (b) No person, including the State or a county, shall  
20 construct, modify, or expand a waste or disposal facility,  
21 including:



1        (1) A municipal solid waste landfill unit;

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

4        (3) A construction and demolition unit; or

5        (4) Any component of a construction and demolition  
6        landfill unit;

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

10       For the purposes of this subsection:

11       "Hazardous waste" shall have the same meaning as defined in  
12       section 342J-2.

13       "Significant aquifer" means a freshwater aquifer with the  
14       potential for use as a drinking water source.

15       [~~(b)~~] (c) No person, including the State or any county,  
16       shall construct, modify, or expand a waste or disposal facility  
17       including a municipal solid waste landfill unit, any component  
18       of a municipal solid waste landfill unit, a construction and  
19       demolition landfill unit, or any component of a construction and  
20       demolition landfill unit without first establishing a buffer  
21       zone of no less than one-half mile around the waste or disposal



1 facility. This subsection shall not apply to the continued  
2 operation of an existing waste or disposal facility that is  
3 properly permitted; provided that continued operation does not  
4 require physical expansion, vertical or horizontal, of the  
5 facility requiring additional permitting review and a permit  
6 modification.

7 For the purposes of this subsection:

8 "Buffer zone" means the distance between the edge of waste  
9 or waste activity and the nearest residential, school, or  
10 hospital property line.

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

13 (d) No person shall utilize fly ash, bottom ash, or a  
14 combination of fly ash and bottom ash from a municipal waste  
15 combustor, including any ash residue that remains after removal  
16 of metals for recycling into new metal products, for the  
17 purposes of road building, construction, or as alternative daily  
18 cover material on a landfill. Fly ash, bottom ash, or a  
19 combination of fly ash and bottom ash from a municipal waste  
20 combustor shall be disposed of in a double-lined and duly  
21 licensed municipal solid waste or hazardous waste landfill."



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

3       SECTION 6. This Act shall take effect on December 31,  
4 2050.



**Report Title:**

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

**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. Prohibits the use of fly ash, bottom ash, or a combination of fly ash and bottom ash from a municipal waste combustor, including any ash residue that remains after removal of metals for recycling into new metal products, for the purposes of road building, construction, or as alternative daily cover material on a landfill. Requires fly ash, bottom ash, or a combination of fly ash and bottom ash from a municipal waste combustor to be disposed of in a double-lined and duly licensed municipal solid waste or hazardous waste landfill. Effective 12/31/2050. (SD1)

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

