

Honolulu, Hawaii

March 17, 2006

RE: S.B. No. 3181
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Energy & Environmental Protection, to which was referred S.B. No. 3181, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO SOLID WASTE,"

begs leave to report as follows:

The purpose of this measure is to amend the definition of deposit beverage container to include sizes up to sixty-eight fluid ounces.

Your Committee received testimony on a proposed House Draft 1 of this measure. The purpose of the proposed House Draft is to establish penalties for violation of the deposit beverage container program. This measure would also deposit all penalties and fines for violations of the program into the deposit beverage container deposit special fund and provide that those moneys may be expended only upon appropriation by the legislature.

The Sierra Club and the Conservation Council for Hawaii supported this measure. The Department of Health supported this measure with amendments and Anheuser-Busch supported the intent of this measure. The Retail Merchants of Hawaii submitted testimony in opposition.

Your Committee has amended the proposed House Draft by:



- (1) Inserting as Part I of this measure the contents of House Bill No. 1948, H.D. 1, the purpose of which is to:
 - (a) Require distributors to report container numbers sold and make fee payments on that basis;
 - (b) Specify redemption center minimum operating hours;
 - (c) Permit calculation of refund value by container count in certain instances;
 - (d) Allow redemption centers to refuse to pay the refund value for deposit beverage containers that exhibit the characteristics of having been previously "processed and baled";
 - (e) Change the container volume in the definition of "deposit beverage container" from sixty-four fluid ounces to sixty-eight fluid ounces;
 - (f) Move the proposed thirty hours per week business hour requirement for redemption centers from section 342G-114, Hawaii Revised Statutes, to section 342G-113, Hawaii Revised Statutes, to ensure that the new business hour requirement is applicable only to redemption centers operated by dealers; and
 - (g) Require dealer redemption centers to operate for at least five hours per week on Saturday or Sunday;
- (2) Deleting the proposed section 342G- (b) (3), Hawaii Revised Statutes, because the conduct involved is covered by other parts of the measure and chapter 342G, Hawaii Revised Statutes, and because it may not warrant a criminal sanction; and
- (3) By making technical nonsubstantive changes for purposes of clarity and consistency.

Your Committee notes that it offered the proposed House Draft 1 of this measure to begin the discussion of criminal prosecution of persons or businesses whose intent is to defraud the program. Based upon the testimony received by your Committee, it is this Committee's understanding that additional work needs to be done to further clarify the language in this measure to achieve that



intent and to ensure that this language is consistent with existing language in the Penal Code.

Your Committee recognizes the concerns raised in the testimony received from beverage distributors and retailers. The intent of this measure is not to penalize minor violations of the deposit beverage container program, which can be addressed by administrative rule. Instead, this measure is intended to establish criminal penalties in cases in which there is a major intent to defraud.

Therefore, your Committee looks forward to working with your Committee on Judiciary, as well as the Department of Health and the Attorney General, in further addressing this issue as the bill moves through the legislative process.

As affirmed by the record of votes of the members of your Committee on Energy & Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3181, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3181, S.D. 2, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Energy &
Environmental Protection,

Hermina Morita

HERMINA MORITA, Chair



