
A BILL FOR AN ACT

RELATING TO THE ENVIRONMENT.

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

1 SECTION 1. The legislature finds that the excessive use of
2 single-use checkout bags presents an unnecessary hazard to the
3 natural environment. While counties have enacted ordinances
4 that either have or will prohibit businesses from providing
5 plastic bags at the point of sale, other single-use checkout
6 bags, such as paper bags:

7 (1) Require crude oil, a polluting fossil fuel, for their
8 manufacture;

9 (2) Burden overcrowded landfills;

10 (3) Are recycled minimally;

11 (4) Contribute to deforestation and greenhouse gas
12 emissions; and

13 (5) Are manufactured using large quantities of water and
14 non-renewable energy.

15 Prohibitions on use of plastic bags may increase reliance on
16 paper bags that also are damaging to the environment. An
17 environmentally friendly alternative to the single-use checkout



1 bag is the reusable bag that consumers can easily acquire,
2 clean, and store.

3 The legislature finds that the State has a compelling
4 interest in protecting its precious natural environment.
5 Several countries and both international and domestic cities
6 have successfully implemented similar laws that have resulted in
7 a significant reduction in single-use checkout bag usage and
8 have used collected fees for environmental protection programs.
9 Because the people of Hawaii depend on the preservation of the
10 natural environment for economic, social, and cultural reasons,
11 the public's health and welfare will benefit immensely from a
12 significant reduction of single-use checkout bag waste and
13 resources used for their manufacture and disposal.

14 The production of single-use checkout bags also requires
15 the consumption and combustion of large quantities of fossil
16 fuels, trees, and water. While plastic bags require large
17 amounts of crude oil to produce, production of paper bags can
18 use twenty times as much fresh water and four times as much
19 energy than plastic bags. In the United States alone, over
20 fourteen million trees are used to create paper bags, causing
21 significant greenhouse gas emissions by removing forests that
22 absorb large quantities of carbon dioxide. Disposing both paper



1 and plastic bags by burning further increases greenhouse gas
2 emissions.

3 The legislature further finds that protecting Hawaii's
4 forests from damage from invasive species helps to mitigate the
5 climate change caused by the production and disposal of single-
6 use checkout bags. The intergovernmental panel on climate
7 change considers reducing or preventing deforestation as the
8 climate mitigation option with the largest and most immediate
9 carbon stock impact in the short term.

10 Forest protection also increases Hawaii's resilience to the
11 likely effects of climate change caused by burning fossil fuels
12 worldwide. Major consequences of climate change for Hawaii's
13 water supplies are predicted, including drought from higher
14 temperatures, reduced rainfall, and rising sea levels salting
15 coastal freshwater aquifers. Climate change may also result in
16 severe storm events, causing flooding and erosion. Through Act
17 152, Session Laws of Hawaii 2000, the legislature recognized
18 that fresh water is not an infinite resource and its high
19 quality, quantity, and sustainability depend upon forested
20 watersheds. Hawaii's forests significantly increase water
21 capture and break the impact of heavy rains, reducing flooding
22 and erosion and siltation of reefs and fisheries. Protecting



1 watersheds is crucial for Hawaii's resiliency to climate change
2 by ensuring water availability and buffering severe storm
3 events.

4 The purpose of this Act is to reduce the adverse impact of
5 single-use checkout bag waste on Hawaii's precious and unique
6 natural environment by establishing an offset fee for the
7 distribution of single-use checkout bags and funding programs to
8 mitigate against damaging effects of single-use checkout bags by
9 improving water quality and resilience to climate change.

10 SECTION 2. Chapter 342H, Hawaii Revised Statutes, is
11 amended by adding a new part to be appropriately designated and
12 to read as follows:

13 **"PART . SINGLE-USE CHECKOUT BAG FEE**

14 **§342H-A Definitions.** As used in this part, unless the
15 context otherwise requires:

16 "Business" means any commercial enterprise or
17 establishment, including sole proprietorships, joint ventures,
18 partnerships, and corporations, or any other legally cognizable
19 entity, whether for profit or not for profit, and includes all
20 employees of the business; provided that food donation
21 organizations shall not be considered a business for purposes of
22 this part.



1 "Mil" means one thousandth of one inch.

2 "Proprietary information" means business information
3 covered by any of the exceptions to public disclosure under
4 chapter 92F.

5 "Reusable bag" means a bag with handles that is
6 specifically designed and manufactured for multiple reuse and is
7 made of:

- 8 (1) Cloth or other machine-washable fabric; or
9 (2) Durable material suitable for reuse, including plastic
10 that is at least 2.25 mils thick.

11 "Single-use checkout bag":

12 (1) Means a bag made of plastic that is less than 2.25
13 mils thick, or a paper package or sack, whether
14 recyclable or non-recyclable, that is provided by a
15 business to a customer, and is designed for one-time
16 use to contain and transport merchandise; and

17 (2) Does not include:

18 (A) Bags used by customers inside a business to
19 package loose items, such as fruits, vegetables,
20 nuts, grains, or candies, or small hardware
21 items;



- 1 (B) Bags used to contain or wrap frozen foods, meat
2 or fish, flowers or potted plants, or other items
3 to contain dampness;
- 4 (C) Bags used to protect or transport prepared foods
5 or bakery goods;
- 6 (D) Bags provided by pharmacists to contain
7 prescription medications;
- 8 (E) Newspaper bags for home newspaper delivery;
- 9 (F) Door-hanger bags;
- 10 (G) Laundry, dry cleaning, or garment bags, including
11 bags provided by hotels to guests to contain wet
12 or dirty clothing;
- 13 (H) Bags sold in packages containing multiple bags
14 intended for use as garbage, pet waste, or yard
15 waste bags;
- 16 (I) Bags used to contain live animals, such as fish
17 or insects sold in pet stores; or
- 18 (J) Bags used to transport chemical pesticides,
19 drain-cleaning chemicals, or other caustic
20 chemicals sold at the retail level; provided that
21 this exemption shall be limited to one bag per
22 customer.



1 "Small business" means a business that grossed \$500,000 or
2 less in revenues in the previous year.

3 **§342H-B Distribution of single-use checkout bags; fee.**

4 (a) Beginning January 1, 2014, all businesses in the State
5 shall charge and collect a fee of ten cents for each single-use
6 checkout bag that is provided to customers.

7 (b) Businesses subject to the requirements of this part
8 shall indicate on each customer transaction receipt the number
9 of single-use checkout bags provided and the amount of the fee
10 charged.

11 (c) Nothing in this part shall preclude businesses from
12 making reusable bags available for sale to customers.

13 (d) Of the fees collected pursuant to subsection (a), a
14 business may retain up to twenty per cent from January 1, 2014,
15 to December 31, 2015, and ten per cent from January 1, 2016, and
16 thereafter, to reimburse the business for the costs of
17 implementing this section; provided that all fees retained shall
18 be subject to chapters 235 and 237; provided further that any
19 taxes imposed on the fees retained shall not be charged to any
20 consumer.



1 (e) Businesses subject to the requirements of this part
2 shall conduct educational outreach to their customers regarding
3 the single-use checkout bag fee program.

4 **§342H-C Remittance of fees.** (a) No later than the last
5 day of each month, each business subject to the requirements of
6 this part shall remit to the department the fees collected
7 pursuant to section 342H-B(a), less the amount retained pursuant
8 to section 342H-B(d), during the immediately preceding month;
9 provided that a small business may remit the fees on a quarterly
10 basis on the last day of the month following the end of a
11 quarter.

12 (b) Payments and receipts of fees shall be reported on
13 forms prescribed by the director. Any proprietary information
14 obtained by the department shall be kept confidential and shall
15 not be disclosed to any other person.

16 (c) Businesses shall be subject to penalties and interest
17 for late or underpaid fees.

18 (d) The department shall deposit all fees collected under
19 this part into a special account in the environmental management
20 special fund established by section 342G-63; provided that of
21 the fees deposited:



1 (1) The first \$800,000 per year shall be expended by the
2 department for administrative, education, audit,
3 compliance, and enforcement activities associated with
4 collection of the single-use checkout bag fee; and

5 (2) Any remaining balance shall be distributed as follows:

6 (A) Twenty per cent shall be deposited into the
7 environmental response revolving fund established
8 under section 128D-2, to be expended by the
9 department; and

10 (B) Eighty per cent shall be deposited into the
11 natural area reserve fund established under
12 section 195-9, to be expended by the department
13 of land and natural resources for watershed
14 protection; watershed restoration, including
15 removal of invasive species; and watershed
16 acquisition.

17 **§342H-D Violations.** (a) It shall be a violation of this
18 part for any business that is subject to the requirements of
19 this part to pay or otherwise reimburse a customer for any
20 portion of the fee required to be charged and collected pursuant
21 to section 342H-B.



1 (b) Violations of this part or any rule adopted pursuant
2 to this part shall be subject to a fine of not less than \$1,000
3 for each violation.

4 **§342H-E Injunctive and other relief.** The director may
5 institute a civil action in any court of competent jurisdiction
6 for injunctive and other relief to correct or abate violation of
7 this part or any rule adopted pursuant to this part, to collect
8 administrative penalties, or to obtain other relief.

9 **§342H-F County ordinances.** (a) Nothing in this part
10 shall be construed to preempt or in any manner affect a county
11 ordinance prohibiting or restricting single-use checkout bags;
12 provided that the fee established under section 342H-B shall
13 apply to single-use checkout bags that are not prohibited or
14 restricted by a county ordinance and to single-use checkout bags
15 for which county prohibitions or restrictions have not yet taken
16 effect until the county prohibitions and restrictions take
17 effect.

18 (b) Nothing in this part shall prohibit a county from
19 enacting ordinances that are more stringent in the control or
20 prohibition of single-use checkout bags than this part.

21 **§342H-G Business reporting.** By March 31 of each year, all
22 businesses that are required to charge and collect the single-



1 use checkout bag fee pursuant to section 342H-B shall submit to
2 the department, on forms prescribed by the department, an annual
3 report for the previous calendar year containing the following
4 information:

5 (1) The number of single-use checkout bags provided to
6 customers; and

7 (2) The number of reusable bags provided to customers.

8 **§342H-H Audit authority.** The records of each business
9 subject to this part shall be made available, upon request, for
10 inspection by the department or a duly authorized agent of the
11 department. Any proprietary information obtained by the
12 department or its duly authorized agent shall be kept
13 confidential and shall not be disclosed to any other person,
14 except:

15 (1) As may be reasonably required in an administrative or
16 judicial proceeding to enforce any provision of this
17 part or any rule adopted pursuant to this part; or

18 (2) Under an order issued by a court or administrative
19 agency hearings officer.

20 **§342H-I Rules.** The director shall adopt rules, pursuant
21 to chapter 91, as may be necessary for the purposes of this
22 part.



1 **§342H-J Annual report.** The department shall submit to the
2 legislature an annual report, no later than twenty days prior to
3 the convening of each regular session, which shall include the
4 department's efforts to effectuate this part, the number of
5 single-use bags distributed, the statewide reduction rate in the
6 number of single-use bags distributed, and any recommended
7 policy changes needed to better effectuate the purpose of this
8 part."

9 SECTION 3. Section 342G-63, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) The department shall expend moneys contained in the
12 environmental management special fund to:

13 (1) Partially fund the operating costs of the program
14 including its regulatory functions and the development
15 of waste reduction and diversion activities as
16 mandated by chapter 342G;

17 (2) Fund statewide education, demonstration, and market
18 development programs, through direct contract or
19 direct transfer of funds to the counties and the
20 department of business, economic development, and
21 tourism, or under a grant program that may be
22 developed under rules pursuant to chapter 91; [~~and~~]



1 (3) Provide for annual training for municipal solid waste
2 operators in compliance with 40 Code of Federal
3 Regulations Part 258 and chapter 11-58.1, Hawaii
4 Administrative Rules[-];

5 (4) Fund administrative, audit, compliance, and
6 enforcement activities associated with the single-use
7 checkout bag fee established by part _____, chapter
8 342H; and

9 (5) Fund educational outreach regarding the single-use
10 checkout bag fee program established by part _____,
11 chapter 342H."

12 SECTION 4. No later than March 31, 2014, each business, as
13 defined in section 2 of this Act, that is required to charge and
14 collect the single-use checkout bag fee shall submit to the
15 department of health a one-time report listing the number of
16 single-use checkout bags and reusable bags provided to customers
17 by that business for the 2013 calendar year.

18 SECTION 5. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$800,000 or so much
20 thereof as may be necessary for fiscal year 2013-2014 for
21 initiating and administering all components of the single-use
22 checkout bag fee program.



1 The sum appropriated shall be expended by the department of
2 health for the purposes of this Act.

3 SECTION 6. If any provision of this Act, or the
4 application thereof to any person or circumstance, is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act that can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 7. Nothing in this Act shall be interpreted or
10 applied so as to create any requirement, power, or duty in
11 conflict with any federal or state law.

12 SECTION 8. In codifying the new sections added by section
13 2 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 9. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 10. This Act shall take effect on July 1, 2013.



Report Title:

Environment; Environmental Protection; Single-Use Checkout Bags;
Fee; Appropriation

Description:

Requires certain businesses in the State to collect a ten-cent fee for each single-use checkout bag provided to customers. Allows businesses to retain a specified portion of fees, subject to income and general excise taxes. Directs use of fee revenues to fund programs to mitigate the effects of single-use checkout bags and protect Hawaii's fresh water supply. Establishes provisions relating to violations, injunctive and other relief, county ordinances, business reporting, and audit authority. Requires annual report to the Legislature. Appropriates funds. Effective July 1, 2013. (HB357 HD1)

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