

JAN 17 2013

---

# A BILL FOR AN ACT

RELATING TO THE ENVIRONMENT.

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

1           SECTION 1. The purpose of this Act is to reduce the  
2 adverse impact of single-use checkout bag waste on Hawaii's  
3 natural environment by establishing an offset fee for the  
4 distribution of single-use checkout bags and directing use of  
5 the fee revenues to fund programs to mitigate the damaging  
6 effects of single-use checkout bags.

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

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

11           **§342H-A Definitions.** As used in this part, unless the  
12 context otherwise requires:

13           "Business" means any commercial enterprise or  
14 establishment, including sole proprietorships, joint ventures,  
15 partnerships, and corporations, or any other legally cognizable  
16 entity, whether for profit or not for profit, and includes all  
17 employees of the business; provided that food donation



1 organizations shall not be considered a business for purposes of  
2 this part.

3 "Mil" means one thousandth of one inch.

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

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

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

13 "Single-use checkout bag":

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

19 (2) Does not include:

- 20 (A) Bags used by customers inside a business to  
21 package loose items, such as fruits, vegetables,



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



1                   this exemption shall be limited to one bag per  
2                   customer.

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

5           **§342H-B Distribution of single-use checkout bags; fee.**

6           (a) Beginning January 1, 2014, all businesses in the State  
7 shall charge and collect a fee of 10 cents for each single-use  
8 checkout bag that is provided to customers.

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

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

15           (d) Of the fees collected pursuant to subsection (a), a  
16 business may retain up to ten per cent from January 1, 2014,  
17 until December 31, 2014, to reimburse the business for the costs  
18 of implementing this section; provided that all fees retained  
19 shall be subject to chapters 235 and 237; provided further that  
20 any taxes imposed on the fees retained shall not be charged to  
21 any 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 \$1,200,000 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) Fifty per cent shall be deposited into the  
7           general fund; and
- 8           (B) Fifty per cent shall be distributed to the  
9           counties in proportion to their populations,  
10          according to the latest census; provided that:
- 11          (i) The county of Hawaii shall expend at least  
12          fifty per cent of its share to fund the big  
13          island invasive species committee;
- 14          (ii) The county of Kauai shall expend at least  
15          fifty per cent of its share to fund the  
16          Kauai invasive species committee;
- 17          (iii) The county of Maui shall expend at least  
18          fifty per cent of its share to fund the Maui  
19          invasive species committee and the Molokai  
20          invasive species committee; and



1                   (iv) The city and county of Honolulu shall expend  
2                   at least fifty per cent of its share to fund  
3                   the Oahu invasive species committee;  
4                   provided further that nothing in this subsection shall  
5                   prevent a county from providing additional funding to  
6                   its respective island-based invasive species  
7                   committee.

8           **§342H-D Violations.** (a) It shall be a violation of this  
9 part for any business that is subject to the requirements of  
10 this part to pay or otherwise reimburse a customer for any  
11 portion of the fee required to be charged and collected pursuant  
12 to section 342H-B.

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

16           **§342H-E Injunctive and other relief.** The director may  
17 institute a civil action in any court of competent jurisdiction  
18 for injunctive and other relief to correct or abate violation of  
19 this part or any rule adopted pursuant to this part, to collect  
20 administrative penalties, or to obtain other relief.

21           **§342H-F County ordinances.** (a) Nothing in this part  
22 shall be construed to preempt or in any manner affect a county



1 ordinance prohibiting or restricting single-use checkout bags;  
2 provided that the fee established under section 342H-B shall be  
3 applicable to single-use checkout bags that are not prohibited  
4 or restricted by a county ordinance and to single-use checkout  
5 bags for which county prohibitions or restrictions have not yet  
6 taken effect until the county prohibitions and restrictions take  
7 effect.

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

11 **§342H-G Business reporting.** By March 31 of each year, all  
12 businesses that are required to charge and collect the single-  
13 use checkout bag fee pursuant to section 342H-B shall submit to  
14 the department, on forms prescribed by the department, an annual  
15 report for the previous calendar year containing the following  
16 information:

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

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

20 **§342H-H Audit authority.** The records of each business  
21 subject to this part shall be made available, upon request, for  
22 inspection by the department or a duly authorized agent of the





1 department. Any proprietary information obtained by the  
2 department or its duly authorized agent shall be kept  
3 confidential and shall not be disclosed to any other person,  
4 except:

- 5 (1) As may be reasonably required in an administrative or  
6 judicial proceeding to enforce any provision of this  
7 part or any rule adopted pursuant to this part; or
- 8 (2) Under an order issued by a court or administrative  
9 agency hearings officer.

10 **§342H-I Rules.** The director shall adopt rules, pursuant  
11 to chapter 91, as may be necessary for the purposes of this  
12 part.

13 **§342H-J Annual report.** The department shall submit to the  
14 legislature an annual report, no later than twenty days prior to  
15 the convening of each regular session, which shall include the  
16 department's efforts to effectuate this part, the number of  
17 single-use bags distributed, the statewide reduction rate in the  
18 number of single-use bags distributed, and any recommended  
19 policy changes needed to better effectuate the purpose of this  
20 part."

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



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

3           (1) Partially fund the operating costs of the program  
4 including its regulatory functions and the development  
5 of waste reduction and diversion activities as  
6 mandated by chapter 342G;

7           (2) Fund statewide education, demonstration, and market  
8 development programs, through direct contract or  
9 direct transfer of funds to the counties and the  
10 department of business, economic development, and  
11 tourism, or under a grant program that may be  
12 developed under rules pursuant to chapter 91; [~~and~~]

13           (3) Provide for annual training for municipal solid waste  
14 operators in compliance with 40 Code of Federal  
15 Regulations Part 258 and chapter 11-58, Hawaii  
16 Administrative Rules [~~and~~];

17           (4) Fund administrative, audit, compliance, and  
18 enforcement activities associated with the single-use  
19 checkout bag fee established by part \_\_\_\_\_, chapter  
20 342H; and



1        (5) Fund educational outreach regarding the single-use  
2                    checkout bag fee program established by part \_\_\_\_\_,  
3                    chapter 342H."

4            SECTION 4. No later than March 31, 2014, each business, as  
5 defined in section 2 of this Act, that is required to charge and  
6 collect the single-use checkout bag fee pursuant to this part  
7 shall submit to the department of health a one-time report  
8 listing the number of single-use checkout bags and reusable bags  
9 provided to customers by that business for the 2013 calendar  
10 year.

11           SECTION 5. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$1,200,000 or so much  
13 thereof as may be necessary for fiscal year 2013-2014 for  
14 initiating and administering all components of the single-use  
15 checkout bag fee program.

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

18           SECTION 6. If any provision of this Act, or the  
19 application thereof to any person or circumstance, is held  
20 invalid, the invalidity does not affect other provisions or  
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

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

6 SECTION 8. In codifying the new sections added by section  
7 2 of this Act, the revisor of statutes shall substitute  
8 appropriate section numbers for the letters used in designating  
9 the new sections in this Act.

10 SECTION 9. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

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

13

INTRODUCED BY: 



# S.B. NO. 14

**Report Title:**

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

**Description:**

Requires certain businesses in the State to collect a 10-cent fee for each single-use checkout bag provided to customers. Allows businesses to retain ten per cent of the fees, subject to income and general excise taxes, for the first year. Directs use of fee revenues, including funding programs to mitigate the effects of single-use checkout bags. Establishes provisions relating to violations, injunctive and other relief, county ordinances, business reporting, and audit authority. Requires annual report to the legislature. Appropriates funds.

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

