

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) 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 be
13 applicable to single-use checkout bags that are not prohibited
14 or restricted by a county ordinance and to single-use checkout
15 bags for which county prohibitions or restrictions have not yet
16 taken 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, 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 pursuant to this part
15 shall submit to the department of health a one-time report
16 listing the number of single-use checkout bags and reusable bags
17 provided to customers by that business for the 2013 calendar
18 year.

19 SECTION 5. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$1,200,000 or so much
21 thereof as may be necessary for fiscal year 2013-2014 for

1 initiating and administering all components of the single-use
2 checkout bag fee program.

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

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

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

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

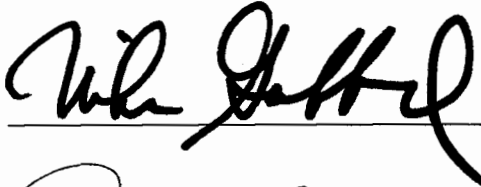

18 SECTION 9. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



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

2

INTRODUCED BY:



S.B. NO. 13

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 to fund 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.

