

JAN 24 2018

A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

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

1 SECTION 1. The legislature finds that plastic marine
2 debris is fouling Hawaii's beaches and the ocean. Plastic
3 marine debris is essentially indestructible. It does not go
4 away over time, but breaks down into smaller and smaller
5 fragments, especially on beaches where it is exposed to sunlight
6 and wave action. These smaller fragments, referred to as
7 microplastics (less than five millimeters, or about the size of
8 a sesame seed and smaller), are much more difficult to remove
9 and persist forever. Therefore, in order to reduce plastic
10 marine debris from Hawaii's beaches and ocean, it is important
11 where feasible to remove that debris before it breaks down.
12 Both larger and smaller pieces of plastic marine debris have
13 significant negative impacts on the environment and contribute
14 to the potential death of marine animals and bird populations
15 through ingestion. This poisonous food chain impacts all
16 species, including birds, whales, turtles, seals, corals, small
17 organisms, the fish that form the foundation of the local



1 fishing industry, and ultimately the humans that eat fish. It
2 is estimated that by 2050, there will be more plastic than fish
3 by weight in the world's oceans. Plastic pollution defaces
4 Hawaii's iconic beaches, the very foundation of the State's
5 tourism industry.

6 While removal of plastic marine debris from beaches is
7 critical to Hawaii's economy and environment, the legislature
8 finds that removal has been hampered by disagreement over which
9 agencies have responsibility and jurisdiction.

10 Hawaii's counties are charged with "removing and clearing
11 all seaweed, limu, and debris which are likely to create an
12 unsanitary or to otherwise become a public nuisance from the
13 shores and beaches situated within the respective counties", per
14 section 46-12, Hawaii Revised Statutes. The counties to date,
15 however, have not implemented that as a mandate applicable to
16 plastic marine debris on their shores and beaches.

17 The legislature finds that the department of land and
18 natural resources is charged with managing, administering, and
19 exercising control over public lands, water resources, ocean
20 waters, navigable streams, coastal areas (excluding commercial
21 harbor areas), aquatic life, and coastal programs, according to



1 section 171-3, Hawaii Revised Statutes. The department of land
2 and natural resources has jurisdiction over state marine waters,
3 which extend seaward from the upper reaches of the wash of the
4 waves, including generally beaches, per section 187A-1.5, Hawaii
5 Revised Statutes. Given this jurisdiction, the legislature
6 finds that the department of land and natural resources should
7 be responsible for removing plastic marine debris from beaches
8 frequently and should be provided additional appropriations to
9 carry out this important task.

10 Since the counties are authorized within their limits to
11 make and enforce all necessary ordinances covering all matters
12 of the collection and disposition of rubbish and garbage,
13 pursuant to section 46-1.5, Hawaii Revised Statutes, the
14 legislature finds the counties should be responsible for
15 disposing promptly at permitted solid waste management systems
16 the plastic marine debris collected by the department of land
17 and natural resources and volunteers.

18 The purpose of this Act is to help protect the beaches and
19 ocean in Hawaii from plastic marine debris by:



- (1) Requiring the department of land and natural resources to remove plastic marine debris from beaches frequently;
- (2) Making an appropriation to the department of land and natural resources to carry out this purpose; and
- (3) Requiring the counties to dispose at permitted solid waste management systems promptly the marine plastic debris collected by the department of land and natural resources and volunteers.

SECTION 2. Section 187A-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Marine plastic debris" means any discarded or abandoned plastic found on any beach, any beach access right-of-way, and in any state marine waters.

"Microplastic" means any marine plastic debris with a diameter of five millimeters or less."

SECTION 3. Section 187A-2, Hawaii Revised Statutes, is amended to read as follows:

"§187A-2 Powers and duties of department. (a) The department shall:



- 1 (1) Manage and administer the aquatic life and aquatic
2 resources of the State;
- 3 (2) Establish and maintain aquatic life propagating
4 station or stations;
- 5 (3) Establish, manage, and regulate public fishing areas,
6 artificial reefs, fish aggregating devices, marine
7 life conservation districts, shoreline fishery
8 management areas, refuges, and other areas pursuant to
9 title 12;
- 10 (4) Subject to this title, import aquatic life for the
11 purpose of propagating and disseminating the same in
12 the State and the waters subject to its jurisdiction;
- 13 (5) Distribute, free of charge, as the department deems to
14 be in the public interest, aquatic life, for the
15 purpose of increasing the food supply of the State;
16 provided that when, in the discretion of the
17 department, the public interest shall not be
18 materially interfered with by so doing, the department
19 may propagate and furnish aquatic life to private
20 parties, upon such reasonable terms, conditions, and
21 prices determined by the department;



1 (6) Gather and compile information and statistics
2 concerning the habitat and character of, and increase
3 and decrease in, aquatic resources in the State,
4 including the care and propagation of aquatic
5 resources for protective, productive, and aesthetic
6 purposes, and other useful information, which the
7 department deems proper;

8 (7) Enforce all laws relating to the protecting, taking,
9 killing, propagating, or increasing of aquatic life
10 within the State and the waters subject to its
11 jurisdiction; ~~and~~

12 (8) Formulate and from time to time recommend to the
13 governor and legislature such additional legislation
14 necessary or desirable to implement the objectives of
15 title 12[-]; and

16 (9) Employ best practices to remove plastic marine debris
17 from beaches frequently.

18 (b) In determining best practices for removing plastic
19 marine debris, the department shall consult and coordinate with
20 experts from the National Oceanic and Atmospheric Administration
21 marine debris program, other coastal states, and non-profit



1 organizations regarding the most efficient and effective
2 practices, equipment, and technologies. When formulating best
3 practices, the department shall attempt to remove the most
4 plastic marine debris, especially microplastics, from beaches.
5 The department shall coordinate with the counties for disposal
6 of marine plastic debris. The department shall submit a report
7 of its findings, including the amount of plastic marine debris,
8 and specifically the amount of microplastics, removed in the
9 prior year, to the legislature no later than twenty days prior
10 to the convening of the regular session each year."

11 SECTION 4. Section 46-1.5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§46-1.5 General powers and limitation of the counties.**
14 Subject to general law, each county shall have the following
15 powers and shall be subject to the following liabilities and
16 limitations:

17 (1) Each county shall have the power to frame and adopt a
18 charter for its own self-government that shall
19 establish the county executive, administrative, and
20 legislative structure and organization, including but
21 not limited to the method of appointment or election



1 of officials, their duties, responsibilities, and
2 compensation, and the terms of their office;

3 (2) Each county shall have the power to provide for and
4 regulate the marking and lighting of all buildings and
5 other structures that may be obstructions or hazards
6 to aerial navigation, so far as may be necessary or
7 proper for the protection and safeguarding of life,
8 health, and property;

9 (3) Each county shall have the power to enforce all claims
10 on behalf of the county and approve all lawful claims
11 against the county, but shall be prohibited from
12 entering into, granting, or making in any manner any
13 contract, authorization, allowance payment, or
14 liability contrary to the provisions of any county
15 charter or general law;

16 (4) Each county shall have the power to make contracts and
17 to do all things necessary and proper to carry into
18 execution all powers vested in the county or any
19 county officer;

20 (5) Each county shall have the power to:



- 1 (A) Maintain channels, whether natural or artificial,
- 2 including their exits to the ocean, in suitable
- 3 condition to carry off storm waters;
- 4 (B) Remove from the channels, and from the shores and
- 5 beaches, any debris that is likely to create an
- 6 unsanitary condition or become a public nuisance;
- 7 provided that, to the extent any of the foregoing
- 8 work is a private responsibility, the
- 9 responsibility may be enforced by the county in
- 10 lieu of the work being done at public expense;
- 11 (C) Construct, acquire by gift, purchase, or by the
- 12 exercise of eminent domain, reconstruct, improve,
- 13 better, extend, and maintain projects or
- 14 undertakings for the control of and protection
- 15 against floods and flood waters, including the
- 16 power to drain and rehabilitate lands already
- 17 flooded;
- 18 (D) Enact zoning ordinances providing that lands
- 19 deemed subject to seasonable, periodic, or
- 20 occasional flooding shall not be used for
- 21 residence or other purposes in a manner as to



1 endanger the health or safety of the occupants
2 thereof, as required by the Federal Flood
3 Insurance Act of 1956 (chapter 1025, Public Law
4 1016); and

5 (E) Establish and charge user fees to create and
6 maintain any stormwater management system or
7 infrastructure;

8 (6) Each county shall have the power to exercise the power
9 of condemnation by eminent domain when it is in the
10 public interest to do so;

11 (7) Each county shall have the power to exercise
12 regulatory powers over business activity as are
13 assigned to them by chapter 445 or other general law;

14 (8) Each county shall have the power to fix the fees and
15 charges for all official services not otherwise
16 provided for;

17 (9) Each county shall have the power to provide by
18 ordinance assessments for the improvement or
19 maintenance of districts within the county;

20 (10) Except as otherwise provided, no county shall have the
21 power to give or loan credit to, or in aid of, any



1 person or corporation, directly or indirectly, except
2 for a public purpose;

3 (11) Where not within the jurisdiction of the public
4 utilities commission, each county shall have the power
5 to regulate by ordinance the operation of motor
6 vehicle common carriers transporting passengers within
7 the county and adopt and amend rules the county deems
8 necessary for the public convenience and necessity;

9 (12) Each county shall have the power to enact and enforce
10 ordinances necessary to prevent or summarily remove
11 public nuisances and to compel the clearing or removal
12 of any public nuisance, refuse, and uncultivated
13 undergrowth from streets, sidewalks, public places,
14 and unoccupied lots. In connection with these powers,
15 each county may impose and enforce liens upon the
16 property for the cost to the county of removing and
17 completing the necessary work where the property
18 owners fail, after reasonable notice, to comply with
19 the ordinances. The authority provided by this
20 paragraph shall not be self-executing, but shall
21 become fully effective within a county only upon the



1 enactment or adoption by the county of appropriate and
2 particular laws, ordinances, or rules defining "public
3 nuisances" with respect to each county's respective
4 circumstances. The counties shall provide the
5 property owner with the opportunity to contest the
6 summary action and to recover the owner's property;

7 (13) Each county shall have the power to enact ordinances
8 deemed necessary to protect health, life, and
9 property, and to preserve the order and security of
10 the county and its inhabitants on any subject or
11 matter not inconsistent with, or tending to defeat,
12 the intent of any state statute where the statute does
13 not disclose an express or implied intent that the
14 statute shall be exclusive or uniform throughout the
15 State;

16 (14) Each county shall have the power to:

17 (A) Make and enforce within the limits of the county
18 all necessary ordinances covering all:

19 (i) Local police matters;

20 (ii) Matters of sanitation;

21 (iii) Matters of inspection of buildings;



1 (iv) Matters of condemnation of unsafe
2 structures, plumbing, sewers, dairies, milk,
3 fish, and morgues; and

4 (v) Matters of the collection and disposition of
5 rubbish and garbage; provided that each
6 county shall dispose of any marine plastic
7 debris and microplastic collected by the
8 department of land and natural resources or
9 by volunteers;

10 (B) Provide exemptions for homeless facilities and
11 any other program for the homeless authorized by
12 part XVII of chapter 346, for all matters under
13 this paragraph;

14 (C) Appoint county physicians and sanitary and other
15 inspectors as necessary to carry into effect
16 ordinances made under this paragraph, who shall
17 have the same power as given by law to agents of
18 the department of health, subject only to
19 limitations placed on them by the terms and
20 conditions of their appointments; and



(D) Fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law;

(15) Each county shall have the power to provide public pounds; to regulate the impounding of stray animals and fowl, and their disposition; and to provide for the appointment, powers, duties, and fees of animal control officers;

(16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as the interests of the inhabitants of the county may require, except that:

(A) Any property held for school purposes may not be disposed of without the consent of the superintendent of education;

(B) No property bordering the ocean shall be sold or otherwise disposed of; and



(C) All proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes;

(17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State;

(18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of:

(A) Community promotion and public celebrations;

(B) The entertainment of distinguished persons as may from time to time visit the county;

(C) The entertainment of other distinguished persons, as well as, public officials when deemed to be in the best interest of the community; and

(D) The rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance;

(19) Each county shall have the power to:



- 1 (A) Construct, purchase, take on lease, lease,
2 sublease, or in any other manner acquire, manage,
3 maintain, or dispose of buildings for county
4 purposes, sewers, sewer systems, pumping
5 stations, waterworks, including reservoirs,
6 wells, pipelines, and other conduits for
7 distributing water to the public, lighting
8 plants, and apparatus and appliances for lighting
9 streets and public buildings, and manage,
10 regulate, and control the same;
- 11 (B) Regulate and control the location and quality of
12 all appliances necessary to the furnishing of
13 water, heat, light, power, telephone, and
14 telecommunications service to the county;
- 15 (C) Acquire, regulate, and control any and all
16 appliances for the sprinkling and cleaning of the
17 streets and the public ways, and for flushing the
18 sewers; and
- 19 (D) Open, close, construct, or maintain county
20 highways or charge toll on county highways;
21 provided that all revenues received from a toll



- 1 charge shall be used for the construction or
- 2 maintenance of county highways;
- 3 (20) Each county shall have the power to regulate the
- 4 renting, subletting, and rental conditions of property
- 5 for places of abode by ordinance;
- 6 (21) Unless otherwise provided by law, each county shall
- 7 have the power to establish by ordinance the order of
- 8 succession of county officials in the event of a
- 9 military or civil disaster;
- 10 (22) Each county shall have the power to sue and be sued in
- 11 its corporate name;
- 12 (23) Each county shall have the power to establish and
- 13 maintain waterworks and sewer works; to collect rates
- 14 for water supplied to consumers and for the use of
- 15 sewers; to install water meters whenever deemed
- 16 expedient; provided that owners of premises having
- 17 vested water rights under existing laws appurtenant to
- 18 the premises shall not be charged for the installation
- 19 or use of the water meters on the premises; to take
- 20 over from the State existing waterworks systems,
- 21 including water rights, pipelines, and other



1 appurtenances belonging thereto, and sewer systems,
2 and to enlarge, develop, and improve the same;

3 (24) (A) Each county may impose civil fines, in addition
4 to criminal penalties, for any violation of
5 county ordinances or rules after reasonable
6 notice and requests to correct or cease the
7 violation have been made upon the violator. Any
8 administratively imposed civil fine shall not be
9 collected until after an opportunity for a
10 hearing under chapter 91. Any appeal shall be
11 filed within thirty days from the date of the
12 final written decision. These proceedings shall
13 not be a prerequisite for any civil fine or
14 injunctive relief ordered by the circuit court;

15 (B) Each county by ordinance may provide for the
16 addition of any unpaid civil fines, ordered by
17 any court of competent jurisdiction, to any
18 taxes, fees, or charges, with the exception of
19 fees or charges for water for residential use and
20 sewer charges, collected by the county. Each
21 county by ordinance may also provide for the



1 addition of any unpaid administratively imposed
2 civil fines, which remain due after all judicial
3 review rights under section 91-14 are exhausted,
4 to any taxes, fees, or charges, with the
5 exception of water for residential use and sewer
6 charges, collected by the county. The ordinance
7 shall specify the administrative procedures for
8 the addition of the unpaid civil fines to the
9 eligible taxes, fees, or charges and may require
10 hearings or other proceedings. After addition of
11 the unpaid civil fines to the taxes, fees, or
12 charges, the unpaid civil fines shall not become
13 a part of any taxes, fees, or charges. The
14 county by ordinance may condition the issuance or
15 renewal of a license, approval, or permit for
16 which a fee or charge is assessed, except for
17 water for residential use and sewer charges, on
18 payment of the unpaid civil fines. Upon
19 recordation of a notice of unpaid civil fines in
20 the bureau of conveyances, the amount of the
21 civil fines, including any increase in the amount



1 of the fine which the county may assess, shall
2 constitute a lien upon all real property or
3 rights to real property belonging to any person
4 liable for the unpaid civil fines. The lien in
5 favor of the county shall be subordinate to any
6 lien in favor of any person recorded or
7 registered prior to the recordation of the notice
8 of unpaid civil fines and senior to any lien
9 recorded or registered after the recordation of
10 the notice. The lien shall continue until the
11 unpaid civil fines are paid in full or until a
12 certificate of release or partial release of the
13 lien, prepared by the county at the owner's
14 expense, is recorded. The notice of unpaid civil
15 fines shall state the amount of the fine as of
16 the date of the notice and maximum permissible
17 daily increase of the fine. The county shall not
18 be required to include a social security number,
19 state general excise taxpayer identification
20 number, or federal employer identification number
21 on the notice. Recordation of the notice in the



bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in land court under chapter 501. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing, and delinquent and may be collected in any lawful manner. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts;

(C) Each county may impose civil fines upon any person who places graffiti on any real or personal property owned, managed, or maintained by the county. The fine may be up to \$1,000 or may be equal to the actual cost of having the damaged property repaired or replaced. The parent or guardian having custody of a minor who places graffiti on any real or personal property



1 owned, managed, or maintained by the county shall
2 be jointly and severally liable with the minor
3 for any civil fines imposed hereunder. Any such
4 fine may be administratively imposed after an
5 opportunity for a hearing under chapter 91, but
6 such a proceeding shall not be a prerequisite for
7 any civil fine ordered by any court. As used in
8 this subparagraph, "graffiti" means any
9 unauthorized drawing, inscription, figure, or
10 mark of any type intentionally created by paint,
11 ink, chalk, dye, or similar substances;

12 (D) At the completion of an appeal in which the
13 county's enforcement action is affirmed and upon
14 correction of the violation if requested by the
15 violator, the case shall be reviewed by the
16 county agency that imposed the civil fines to
17 determine the appropriateness of the amount of
18 the civil fines that accrued while the appeal
19 proceedings were pending. In its review of the
20 amount of the accrued fines, the county agency
21 may consider:



- 1 (i) The nature and egregiousness of the
2 violation;
3 (ii) The duration of the violation;
4 (iii) The number of recurring and other similar
5 violations;
6 (iv) Any effort taken by the violator to correct
7 the violation;
8 (v) The degree of involvement in causing or
9 continuing the violation;
10 (vi) Reasons for any delay in the completion of
11 the appeal; and
12 (vii) Other extenuating circumstances.

13 The civil fine that is imposed by administrative
14 order after this review is completed and the
15 violation is corrected shall be subject to
16 judicial review, notwithstanding any provisions
17 for administrative review in county charters;
18 (E) After completion of a review of the amount of
19 accrued civil fine by the county agency that
20 imposed the fine, the amount of the civil fine
21 determined appropriate, including both the



1 initial civil fine and any accrued daily civil
2 fine, shall immediately become due and
3 collectible following reasonable notice to the
4 violation. If no review of the accrued civil fine
5 is requested, the amount of the civil fine, not
6 to exceed the total accrual of civil fine prior
7 to correcting the violation, shall immediately
8 become due and collectible following reasonable
9 notice to the violator, at the completion of all
10 appeal proceedings;

11 (F) If no county agency exists to conduct appeal
12 proceedings for a particular civil fine action
13 taken by the county, then one shall be
14 established by ordinance before the county shall
15 impose the civil fine;

16 (25) Any law to the contrary notwithstanding, any county
17 mayor, by executive order, may exempt donors, provider
18 agencies, homeless facilities, and any other program
19 for the homeless under part XVII of chapter 346 from
20 real property taxes, water and sewer development fees,
21 rates collected for water supplied to consumers and



1 for use of sewers, and any other county taxes,
2 charges, or fees; provided that any county may enact
3 ordinances to regulate and grant the exemptions
4 granted by this paragraph;

5 (26) Any county may establish a captive insurance company
6 pursuant to article 19, chapter 431; and

7 (27) Each county shall have the power to enact and enforce
8 ordinances regulating towing operations."

9 SECTION 5. Section 46-12, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§46-12 Cleaning shores and beaches of seaweed, limu, and**
12 **debris.** The various counties shall be responsible for removing
13 and clearing all seaweed, limu, and debris which are likely to
14 create an unsanitary condition or to otherwise become a public
15 nuisance from the shores and beaches situated within the
16 respective counties; provided that to the extent any of the
17 foregoing work is a private responsibility, the responsibility
18 may be enforced by the county in lieu of the work being done at
19 public expense[-]; provided further that collection of marine
20 plastic debris and microplastic shall be the responsibility of
21 the department of land and natural resources, and the county



1 shall dispose of any marine plastic debris or microplastic so
2 collected at permitted solid waste management systems. For
3 purposes of this section, "marine plastic debris" and
4 "microplastic" shall have the same meanings as in section
5 187A-1."

6 SECTION 6. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$ or so
8 much thereof as may be necessary for fiscal year 2018-2019 for
9 the acquisition of equipment, hiring of necessary staff, and
10 other operating expenses necessary to employ best practices to
11 remove plastic marine debris from beaches frequently.

12 The sum appropriated shall be expended by the department of
13 land and natural resources for the purposes of this Act.

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect on July 1, 2018.
17

INTRODUCED BY:

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S.B. NO. 2964

Report Title:

Marine Plastic Debris; Microplastic; Department of Land and Natural Resources; Counties; Appropriation

Description:

Requires department of land and natural resources to collect marine plastic debris. Requires counties to dispose of marine plastic debris collected by the department of land and natural resources or by volunteers. 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.

