

JAN 17 2020

A BILL FOR AN ACT

RELATING TO HYDROFLUOROCARBON REFRIGERANTS.

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

1 SECTION 1. The legislature finds that hydrofluorocarbons,
2 or HFCs, are air pollutants that are at least one hundred times
3 and up to several thousand times more potent as greenhouse gases
4 than carbon dioxide. Due to their global warming potential,
5 hydrofluorocarbons pose a significant threat when released to
6 our environment.

7 The legislature finds that hydrofluorocarbons are entirely
8 human-made and do not occur naturally. Hydrofluorocarbons are
9 mainly used in refrigeration and air conditioning equipment and
10 as propellants in industrial aerosols, having replaced the use
11 of chlorofluorocarbons in those roles after chlorofluorocarbons
12 were found to damage the ozone layer in the upper atmosphere.
13 Hydrofluorocarbons are also used for foam blowing, solvent
14 cleaning, and in fire extinguishers. The main sources of
15 hydrofluorocarbons in the atmosphere are from the manufacture
16 of, leakage from, and disposal of refrigeration and air
17 conditioning equipment and aerosols.



1 Although the United States Environmental Protection Agency
2 adopted rules in 2016 to ban the use of certain
3 hydrofluorocarbons, a federal appeals court vacated those rules
4 in 2017, finding that the Environmental Protection Agency did
5 not have the clear authority to impose the ban. Due to the
6 absence of federal regulation in this area, the legislature
7 finds that states must now provide leadership to address the use
8 of hydrofluorocarbons. Climate change will not wait for
9 Congress to amend federal law to clarify the scope of the
10 Environmental Protection Agency's authority. The legislature
11 also finds that prompt state action will help American
12 businesses retain their positions as global leaders in air
13 conditioning and refrigerant technologies.

14 Hawaii's 2015 greenhouse gas emissions report, which was
15 prepared by the university of Hawaii's economic research
16 organization for the department of health and released in 2019,
17 estimated that hydrofluorocarbon emissions rose more than fifty
18 per cent between 2007 and 2015 and totaled approximately eight
19 hundred twenty thousand metric tons of carbon dioxide
20 equivalents, accounting for ninety-nine per cent of the State's
21 industrial process and product use emissions. Despite this,



1 cost-effective alternatives to the most damaging
2 hydrofluorocarbons are readily available. Therefore,
3 hydrofluorocarbons will be comparatively easy to reduce and
4 eliminate without widespread implications for the way that power
5 is produced, heavy industries operate, or people transport
6 themselves. Substituting or reducing the use of
7 hydrofluorocarbons with the highest global warming potential
8 will provide a significant boost to the State's efforts to
9 reduce its greenhouse gas emissions to the limits established.

10 Accordingly, the purpose of this Act is to encourage the
11 transition to the use of less damaging hydrofluorocarbons or
12 suitable substitutes in various applications in Hawaii. The
13 legislature notes that the framework established by this Act is
14 similar to regulations that were previously adopted by the
15 Environmental Protection Agency and that have been subsequently
16 adopted in other states.

17 SECTION 2. Chapter 342B, Hawaii Revised Statutes, is
18 amended by adding a new part to be appropriately designated and
19 to read as follows:

20 "PART . REGULATION OF HYDROFLUOROCARBONS



1 **§342B-A Definitions.** As used in this part, unless the
2 context otherwise requires:

3 "Class I substance" and "class II substance" means those
4 substances listed in 42 United States Code section 7671a, as it
5 read on November 15, 1990, or those listed in Appendix A or B of
6 Subpart A of 40 Code of Federal Regulations part 82, as those
7 read on January 3, 2017.

8 "Consumer refrigeration product" shall have the same
9 meaning as in 10 Code of Federal Regulations section 430.2, as
10 that section read on January 3, 2017.

11 "Greenhouse gas" includes carbon dioxide, methane, nitrous
12 oxide, hydrofluorocarbons, perfluorocarbons, sulfur
13 hexafluoride, and any other gas designated by the department by
14 rule.

15 "Hydrofluorocarbons" means a class of greenhouse gases that
16 are saturated organic compounds containing hydrogen, fluorine,
17 and carbon.

18 "Manufacturer" means a person that produces, imports, or
19 distributes a product that contains or uses hydrofluorocarbons.



1 "Retrofit" shall have the same meaning as in 40 Code of
2 Federal Regulations section 82.152 section 152, as that section
3 read on January 3, 2017.

4 "Substitute" means a chemical, product substitute, or
5 alternate manufacturing process, whether existing or new, that
6 is used to perform a function previously performed by a class I
7 substance or class II substance and any substitute subsequently
8 adopted to perform that function, including but not limited to
9 hydrofluorocarbons; provided that the term shall not include
10 2-BTP or any compound as applied to its use in aerospace fire
11 extinguishing systems.

12 **§342B-B Regulation of hydrofluorocarbons.** (a) No person
13 shall offer any product or equipment for sale, lease, rent,
14 install, or otherwise cause the product or equipment to enter
15 commerce in the State if that equipment or product consists of,
16 uses, or will use a substitute, consistent with the deadlines
17 established in subsection (b).

18 (b) The restrictions under subsection (a) for the
19 following products and equipment identified in Appendixes U and
20 V, Subpart G of 40 Code of Federal Regulations Part 82, as those
21 read on January 3, 2017, shall take effect beginning:



- 1 (1) January 1, 2021, for:
 - 2 (A) Propellants;
 - 3 (B) Rigid polyurethane applications and spray foam,
 - 4 flexible polyurethane, integral skin
 - 5 polyurethane, flexible polyurethane foam,
 - 6 polystyrene extended sheet, polyolefin, phenolic
 - 7 insulation board, and bunstock; and
 - 8 (C) Supermarket systems, remote condensing units,
 - 9 standalone units, and vending machines;
- 10 (2) January 1, 2022, for:
 - 11 (A) Refrigerated food processing and dispensing
 - 12 equipment;
 - 13 (B) Compact consumer refrigeration products; and
 - 14 (C) Polystyrene extruded boardstock and billet, and
 - 15 rigid polyurethane low-pressure two component
 - 16 spray foam;
- 17 (3) January 1, 2023, for consumer refrigeration products
- 18 other than compact and built-in consumer refrigeration
- 19 products;
- 20 (4) July 1, 2023, for cold storage warehouses;



- 1 (5) July 1, 2024, for built-in consumer refrigeration
2 products;
- 3 (6) July 1, 2024, for centrifugal chillers and positive
4 displacement chillers; and
- 5 (7) On either July 1, 2022, or the effective date of the
6 restrictions identified in appendixes U and V, Subpart
7 G of 40 Code of Federal Regulations Part 82, as those
8 read on January 3, 2017, whichever is later, for all
9 other applications and end uses for substitutes not
10 covered by the categories listed in paragraphs (1)
11 through (6) of this subsection.

12 (c) Except where existing equipment is retrofit, nothing
13 in this section shall be deemed to require a person who acquired
14 a restricted product or equipment prior to the effective date of
15 the restrictions in subsection (b) to cease use of that product
16 or equipment. A product or equipment manufactured prior to the
17 applicable effective date of the restrictions specified in
18 subsection (b) may be sold, imported, exported, distributed,
19 installed, and used after the specified effective date.

20 (d) The department may adopt rules pursuant to chapter 91
21 to:



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- 1 (1) Modify the effective date of a prohibition established
2 in subsection (b) if the department determines that
3 the rule reduces the overall risk to human health or
4 the environment and reflects the earliest date that a
5 substitute is currently or potentially available;
- 6 (2) Prohibit the use of a substitute if the department
7 determines that the prohibition reduces the overall
8 risk to human health or the environment and that a
9 lower risk substitute is currently or potentially
10 available;
- 11 (3) Adopt a list of approved substitutes, use conditions,
12 or use limits, if any;
- 13 (4) Add or remove substitutes, use conditions, or use
14 limits to or from the list of approved substitutes if
15 the department determines those substitutes reduce the
16 overall risk to human health and the environment; and
- 17 (5) Designate acceptable uses of hydrofluorocarbons for
18 medical uses that are exempt from the requirements of
19 subsection (b).
- 20 (e) Within twelve months of another state's enactment or
21 adoption of restrictions on substitutes applicable to new light



1 duty vehicles, the department may adopt restrictions applicable
2 to the sale, lease, rental, or other introduction into commerce
3 by a manufacturer of new light duty vehicles consistent with the
4 restrictions identified in Appendix B, Subpart G of 40 Code of
5 Federal Regulations Part 82, as it read on January 3, 2017. The
6 department shall not adopt restrictions that take effect prior
7 to the effective date of the restrictions adopted or enacted in
8 at least one other state.

9 (f) If the United States Environmental Protection Agency
10 approves a previously prohibited hydrofluorocarbon blend with a
11 global warming potential of seven hundred fifty or less for foam
12 blowing of polystyrene extruded boardstock and billet and rigid
13 polyurethane low-pressure two-component spray foam pursuant to
14 the significant new alternatives policy program under 42 United
15 States Code section 7671k, the department shall adopt rules to
16 conform its rules to that federal action as soon as practicable.

17 **§342B-C Disclosure of the use of substitutes.** A
18 manufacturer shall disclose the substitutes used in its products
19 or equipment in the form of:



- 1 (1) A label on the product or equipment that meets the
2 requirements established by the department by rule;
3 provided that:
- 4 (A) To the extent practicable, the department shall
5 recognize existing labeling that provides
6 sufficient disclosure of the use of substitutes
7 in the product or equipment;
- 8 (B) The department shall consider labels required by
9 state building codes and other safety standards
10 when adopting rules pursuant to this paragraph;
11 and
- 12 (C) The department shall not require the labeling of
13 aircraft and aircraft components subject to
14 certification requirements of the Federal
15 Aviation Administration; and
- 16 (2) Submitting information about the use of substitutes to
17 the department, upon request; provided that the
18 submission meets the following deadlines:
- 19 (A) By December 31, 2021, all manufacturers shall
20 notify the department of the status of each
21 product class utilizing hydrofluorocarbons or

1 other substitutes restricted under section 342B-A
2 that the manufacturer sells, offers for sale,
3 leases, installs, or rents in the State. This
4 status notification shall identify the
5 substitutes used by the products or equipment in
6 each product or equipment class in a manner
7 determined by rule;

8 (B) Within one hundred twenty days of the date a
9 restriction is put in place pursuant to this
10 section, any manufacturer affected by the
11 restriction shall provide an updated status
12 notification, which shall indicate whether the
13 manufacturer has ceased the use of
14 hydrofluorocarbons or substitutes restricted
15 under this section within each product class and,
16 if not, what hydrofluorocarbons or other
17 restricted substitutes remain in use; and

18 (C) After the effective date of a restriction put in
19 place pursuant to this section, a manufacturer
20 shall provide an updated status notification when
21 the manufacturer introduces a new or modified



1 product or piece of equipment that uses
2 hydrofluorocarbons or changes the type of
3 hydrofluorocarbons utilized within a product
4 class affected by a restriction; provided that
5 the notification shall occur within one hundred
6 twenty days of the date the product or equipment
7 triggering the notification requirement in this
8 subparagraph is introduced into commerce in the
9 State.

10 **§342B-D Rules.** The department may adopt rules pursuant to
11 chapter 91 to implement this section; provided that:

12 (1) The department shall seek, where feasible, to adopt
13 rules, including rules under section 342B-B(e), that
14 are consistent with the regulatory standards,
15 exemptions, reporting obligations, disclosure
16 requirements, and other compliance requirements of
17 other states or the federal government that have
18 adopted restrictions on the use of hydrofluorocarbons
19 and other substitutes; and

20 (2) Prior to the adoption or update of a rule under this
21 section, the department shall identify the sources of



1 information it relied on, including peer-reviewed
2 science.

3 **§342B-E Aircraft maintenance; definition.** For the
4 purposes of implementing the restrictions specified in
5 Appendix U of Subpart G of 40 C.F.R. Part 82, as it read on
6 January 3, 2017, consistent with this section, the department
7 shall interpret the term "aircraft maintenance" to mean
8 activities to support the production, fabrication, manufacture,
9 rework, inspection, maintenance, overhaul, or repair of
10 commercial, civil, or military aircraft, aircraft parts,
11 aerospace vehicles, or aerospace components.

12 **§342B-F Authority to regulate supplementary.** The
13 authority granted by this part to the department to restrict the
14 use of substitutes shall be supplementary to the department's
15 authority to control air pollution pursuant to this chapter.
16 Nothing in this part shall be construed to limit any authority
17 granted to the department under any other law.

18 **§342B-G Use of commercial refrigeration equipment after**
19 **effective date of restrictions.** Except where existing equipment
20 is retrofit, the restrictions of this part shall not apply to or
21 limit any use of commercial refrigeration equipment that was



1 installed or placed in use prior to the effective date of the
2 restrictions established in this part.

3 **§342B-H Penalties.** (a) The department may fine any
4 person not more than \$25,000 per day for each violation of any
5 provision of this part or any rule adopted under this part. The
6 director may also impose an administrative penalty of not more
7 than \$25,000 per day for each violation of any provision of this
8 part or any rule adopted under this part. Each day of each
9 violation shall constitute a separate offense for the purpose of
10 calculating the fine or penalty.

11 (b) Any person who fails to comply with an order issued
12 pursuant to this part shall be fined not more than \$25,000 for
13 each day of continued noncompliance.

14 (c) A fine or administrative penalty incurred but not paid
15 shall accrue interest, beginning on the ninety-first day
16 following the date the penalty became due, at the highest rate
17 allowed under chapter 478. If a fine or administrative penalty
18 is appealed, interest shall not begin to accrue until the
19 thirty-first day following the date of the final resolution of
20 the appeal.



1 (d) The maximum penalty amount established by subsection
2 (a) may be increased annually to adjust for inflation, as
3 calculated by the consumer price index or other acceptable
4 adjustment mechanism as determined by the rule.

5 (e) All fines collected under this section shall be
6 deposited in the environmental response revolving fund
7 established by section 128D-2.

8 (f) A public or private entity that receives or is the
9 potential recipient of a grant from the department may have the
10 grant rescinded or withheld by the department for failure to
11 comply with the provisions of this part.

12 (g) In addition to other penalties provided by this part
13 or by a rule adopted pursuant to this part, any person who
14 knowingly underreports emissions or other information used to
15 set fees, or persons who are required to pay emission or permit
16 fees who are more than ninety days late with regard to the
17 payment, may be subject to a penalty equal to three times the
18 amount of the original fee owed.

19 (h) The department shall adopt rules to excuse excess
20 emissions from enforcement action if the emissions are
21 unavoidable. The rules shall specify the criteria and



1 procedures for the department and local air authorities to
2 determine whether a period of excess emissions is excusable in
3 accordance with the state implementation plan."

4 SECTION 3. Chapter 103D, Hawaii Revised Statutes, is
5 amended by adding a new section to part X to be appropriately
6 designated and to read as follows:

7 "§103D- Preference for products that do not contain
8 hydrofluorocarbons. (a) The policy board shall adopt rules
9 that provide a preference for products that:

- 10 (1) Are not restricted under section 342B-B;
11 (2) Do not contain hydrofluorocarbons or contain
12 hydrofluorocarbons with a comparatively low global
13 warming potential;
14 (3) Are not designed to function only in conjunction with
15 hydrofluorocarbons characterized by a comparatively
16 high global warming potential; and
17 (4) Were not manufactured using hydrofluorocarbons or were
18 manufactured using hydrofluorocarbons with a low
19 global warming potential.
20 (b) A government body shall not knowingly purchase a
21 product that is not accorded a preference in the purchasing and



1 procurement rules established by the policy board pursuant to
2 subsection (a) unless there is no cost-effective and
3 technologically feasible option that is accorded a preference.

4 (c) Nothing in this section shall require an agency to
5 breach an existing contract or dispose of stock that has been
6 ordered or is in the possession of the agency as of the
7 effective date of this section.

8 (d) As used in this section, "hydrofluorocarbon" shall
9 have the same meaning as in section 342B-A."

10 SECTION 4. Chapter 107, Hawaii Revised Statutes, is
11 amended by adding a new section to part II to be appropriately
12 designated and to read as follows:

13 "§107- State building codes; hydrofluorocarbons;
14 updates. (a) When adopting, amending, or updating the codes
15 and standards identified in section 107-25, the council shall
16 establish codes and standards that permit the use of substitutes
17 and do not require the use of substitutes that are restricted by
18 section 342B-B.

19 (b) As used in this section, "substitute" shall have the
20 same meaning as in section 342B-A."



1 SECTION 5. (a) The department of health, in conjunction
2 with the state energy office, shall conduct a study that:

3 (1) Addresses how to increase the use of refrigerants with
4 low global warming potential in mobile sources,
5 utility equipment, and consumer appliances;

6 (2) Addresses how to reduce other uses of
7 hydrofluorocarbons in the State; and

8 (3) Provides recommendations for funding, structuring, and
9 prioritizing a state program that incentivizes or
10 provides grants to support the elimination of legacy
11 uses of all hydrofluorocarbons, including
12 hydrofluorocarbons that are not regulated by section 2
13 of this Act.

14 (b) The department of health shall submit a report of its
15 findings and recommendations, including any proposed
16 legislation, to the legislature no later than December 1, 2022.

17 SECTION 6. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 7. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held



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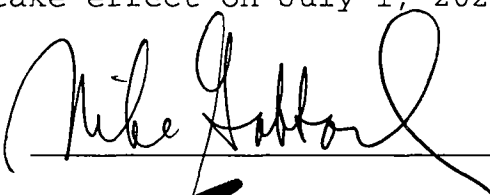
1 invalid, the invalidity does not affect other provisions or
 2 applications of the Act that can be given effect without the
 3 invalid provision or application, and to this end the provisions
 4 of this Act are severable.

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

9 SECTION 9. New statutory material is underscored.

10 SECTION 10. This Act shall take effect on July 1, 2020.

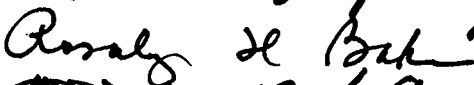
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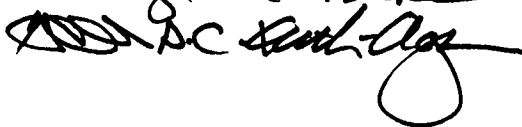
INTRODUCED BY: 













S.B. NO. 2760

Report Title:

Hydrofluorocarbons; Greenhouse Gas Emissions; Phase Out; Procurement; Procurement Policy Board; DOH; State Energy Office; Study

Description:

Preserves preexisting federal regulations on the use of hydrofluorocarbons in state law by phasing out those compounds in favor of alternatives with lower global warming potential. Establishes a preference in state procurement for products that do not contain hydrofluorocarbons. Directs the Department of Health and the State Energy Office to study how to increase the use of refrigerants with low global warming potential, reduce the use of hydrofluorocarbons, and recommend how to fund, structure, and prioritize a state program that supports the elimination of legacy uses of hydrofluorocarbons.

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

