

JAN 24 2013

A BILL FOR AN ACT

RELATING TO SINGLE-USE CHECKOUT BAGS FEES.

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 or any independent contractors
21 associated with the business; provided that food donation

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

3 "Mil" means one thousandth of one inch.

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

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

10 "Single-use checkout bag":

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

16 (2) Does not include:

- 17 (A) Bags used by customers inside a business to
18 package loose items, such as fruits, vegetables,
19 nuts, grains, candies, or small hardware items;
- 20 (B) Bags used to contain or wrap frozen foods, meat
21 or fish, flowers or potted plants, or other items
22 to contain dampness;

- 1 (C) Bags used to protect or transport prepared foods
- 2 or bakery goods;
- 3 (D) Bags provided by pharmacists to contain
- 4 prescription medications;
- 5 (E) Newspaper bags for home newspaper delivery;
- 6 (F) Door-hanger bags;
- 7 (G) Laundry, dry cleaning, or garment bags, including
- 8 bags provided by hotels to guests to contain wet
- 9 or dirty clothing;
- 10 (H) Bags sold in packages containing multiple bags
- 11 intended for use as garbage, pet waste, or yard
- 12 waste bags; or
- 13 (I) Bags used to contain live animals, such as fish
- 14 or insects sold in pet stores.

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

17 **§342H-B Distribution of single-use checkout bags; fee.**

18 (a) Beginning January 1, 2014, all businesses in the State
19 shall charge and collect a fee of 10 cents for each single-use
20 checkout bag that is provided to customers; provided that, if
21 after July 1, 2017, the department determines that the statewide
22 distribution of single-use checkout bags has not decreased by at

1 least seventy-five per cent from the effective date of this
2 part, the fee shall increase to 25 cents on January 1, 2018.

3 (b) Businesses subject to the requirements of this part
4 shall indicate on each customer transaction receipt the number
5 of single-use checkout bags provided and the amount of the fee
6 charged.

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

9 (d) Of the fees collected pursuant to subsection (a), a
10 business may retain:

11 (1) Up to twenty per cent from January 1, 2014, through
12 December 31, 2014; and

13 (2) Up to ten per cent from January 1, 2015, and
14 thereafter;

15 provided that all fees retained shall be subject to chapters 235
16 and 237.

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

20 **§342H-C Remittance of fees.** (a) No later than the last
21 day of each month, each business subject to the requirements of
22 this part shall remit to the department the fees collected

1 pursuant to section 342H-B(a), less the amount retained pursuant
2 to section 342H-B(d), during the immediately preceding month;
3 provided that a small business may remit the fees on a quarterly
4 basis on the last day of the month following the end of a
5 quarter.

6 (b) Payments and receipts of fees shall be reported on
7 forms prescribed by the director. Any proprietary information
8 obtained by the department shall be kept confidential and shall
9 not be disclosed to any other person.

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

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

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

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

21 (A) Twenty per cent shall be deposited into the
22 environmental response revolving fund established

1 under section 128D-2, to be expended by the
2 department; and

3 (B) Eighty per cent shall be deposited into the
4 natural area reserve fund established under
5 section 195-9, to be expended by the department
6 of land and natural resources for projects
7 undertaken in accordance with watershed
8 management plans and for departmental projects
9 for invasive species control.

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

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

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

1 **§342H-F County ordinances.** (a) Nothing in this part
2 shall be construed to preempt or in any manner affect a county
3 ordinance prohibiting or restricting single-use checkout bags;
4 provided that the fee established under section 342H-B shall be
5 applicable to single-use checkout bags that are not prohibited
6 or restricted by a county ordinance.

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

10 **§342H-G Business reporting.** By March 31 of each year, all
11 businesses that are required to charge and collect the single-
12 use checkout bag fee pursuant to section 342H-B shall submit to
13 the department, on forms prescribed by the department, an annual
14 report for the previous calendar year containing the number of
15 single-use checkout bags provided to customers.

16 **§342H-H Audit authority.** The records of each business
17 subject to this part shall be made available, upon request, for
18 inspection by the department or a duly authorized agent of the
19 department. Any proprietary information obtained by the
20 department or its agents shall be kept confidential and shall
21 not be disclosed to any other person, except:

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

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

6 **§342H-I Rules.** The director shall adopt rules, pursuant
7 to chapter 91, as may be necessary for the purposes of this
8 part.

9 **§342H-J Annual report.** The department shall submit to the
10 legislature an annual report, no later than twenty days prior to
11 the convening of each regular session, which shall include the
12 department's efforts to effectuate this part, the number of
13 single-use bags distributed, the statewide reduction rate in the
14 number of single-use bags distributed, and any recommended
15 policy changes needed to better effectuate the purpose of this
16 part."

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

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

21 (1) Partially fund the operating costs of the program
22 including its regulatory functions and the development

S.B. NO. 1145

- 1 of waste reduction and diversion activities as
2 mandated by chapter 342G;
- 3 (2) Fund statewide education, demonstration, and market
4 development programs, through direct contract or
5 direct transfer of funds to the counties and the
6 department of business, economic development, and
7 tourism, or under a grant program that may be
8 developed under rules pursuant to chapter 91; ~~and~~
- 9 (3) Provide for annual training for municipal solid
10 waste operators in compliance with 40 Code of Federal
11 Regulations Part 258 and chapter 11-58, Hawaii
12 Administrative Rules[-];
- 13 (4) Fund administrative, audit, compliance, and
14 enforcement activities associated with the single-use
15 checkout bag fee established by part of chapter
16 342H; and
- 17 (5) Fund educational outreach regarding the single-use
18 checkout bag fee program established by part of
19 chapter 342H."

20 SECTION 4. No later than March 31, 2014, each business, as
21 defined in section 2 of this Act, that is required to charge and
22 collect the single-use checkout bag fee pursuant to this part

1 shall submit to the department of health a one-time report
2 listing the number of single-use checkout bags and reusable bags
3 provided to customers by that business for the 2013 calendar
4 year.

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

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

12 SECTION 6. If any provision of this Act, or the
13 application thereof to any person or circumstance is held
14 invalid, the invalidity does not affect other provisions or
15 applications of the Act, which can be given effect without the
16 invalid provision or application, and to this end the provisions
17 of this Act are severable.

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

21 SECTION 8. In codifying the new sections added to chapter
22 342H, Hawaii Revised Statutes, by section 2 of this Act, the

S.B. NO. 1145

1 revisor of statutes shall substitute appropriate section numbers
2 for the letters used in designating the new sections in this
3 Act.

4 SECTION 9. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act, upon its approval, shall take effect
7 on July 1, 2013.

8
9 INTRODUCED BY:



10 BY REQUEST

S.B. NO. 1165

Report Title:

Environmental Protection; Single-use Checkout Bags; Fee

Description:

Establishes an offset fee for the distribution of single-use checkout bags and funding programs to mitigate against damaging effects of single-use checkout bags by improving water quality and resilience to climate change.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO SINGLE-USE CHECKOUT BAGS FEES.

PURPOSE: To establish an offset fee for the distribution of single-use checkout bags. The fee would be used to fund programs to mitigate against damaging effects of single-use checkout bags by improving water quality and resilience to climate change.

MEANS: Add a new part to chapter 342H, Hawaii Revised Statutes (HRS), and amend section 342G-63(c), HRS.

JUSTIFICATION: Governor Neil Abercrombie's "A New Day in Hawaii" plan calls for the stewardship of the natural resources that our survival, economy, and quality of life depend on. Priority actions of the plan include managing invasive species, increasing Hawaii's ability to withstand impacts from climate change, and restoring capabilities of the Department by finding additional sources of funding. To implement these central goals of the Abercrombie Administration, the Department released "The Rain Follows the Forest - A Plan to Protect Hawaii's Source of Water."

This bill seeks to significantly reduce use of single-use checkout bags that damage natural resources during their production and disposal. The bill also mitigates damage to these resources by funding programs that reduce greenhouse gas emissions, pollution, deforestation, and the effects of climate change.

The Department's goal is to double the acres of protected watershed areas in ten years. This will require approximately \$11,000,000 per year, and create over 150 local jobs.

This bill would fund this initiative that will sustain and enrich current and future generations.

Impact on the public: The fee charged will be used to mitigate negative effects of single-use plastic bags and provide many other fundamental benefits to Hawai'i's environmental health.

Impact on the department and other agencies: This bill will increase funding for the Department's programs that protect watershed forests and invasive species control, establish and fund a new program in the Department of Health to administer the program, and provide funding for the Environmental Response Revolving Fund.

GENERAL FUND: \$800,000.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH 840; LNR 407.

OTHER AFFECTED
AGENCIES: Department of Budget and Finance, Department of Agriculture, and Department of Health.

EFFECTIVE DATE: July 1, 2013.