



GOV. MSG. NO. 1083

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 11, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 1026 SD2 HD3 CD1

On July 10, 2007, Senate Bill No. 1026 entitled "A Bill for an Act Relating to Solid Waste" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to make 2-liter bottles subject to the deposit beverage container law, authorizes the Director of Health to suspend a statutory provision which requires the automatic increase of the non-refundable deposit beverage container fee, and requires redemption centers in high density areas to remain open 30 hours per week, of which at least 5 hours must be on Saturday or Sunday.

This bill is similar to a bill that I vetoed last year that would have included 2-liter bottles under the beverage container program. I vetoed this prior bill because 2-liter bottles are difficult to recycle and would have had little impact on beach or roadside litter. The prior bill did not provide for a phased implementation date to give manufacturers and retailers sufficient time to implement the new law and inclusion of 2-liter bottles under the bottle law would have had a disproportionate impact on families.

This bill addresses one concern from last year by including a phase-in for manufacturers and distributors to label the 2-liter bottles with the "HI-5" designation between December 1, 2007 and March 1, 2008.

However, this bill will still have a disproportionate impact on families. Two-liter bottles are purchased more often by those seeking to buy in bulk to conserve funds and lower their grocery bills. Including larger size containers within the fee and deposit requirements of the beverage container program subjects these buyers to higher costs imposed by this program.

Two-liter bottles are more difficult to recycle. The reverse vending machines that are used in State are not built to redeem 2-liter bottles. While there may be reverse vending machines available, it is not assured that any redemption center will import these machines into

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and Members of the Senate
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the State. In addition, 2-liter bottles are bulkier and cannot be crushed if they are redeemed using machine technologies.

I remain concerned that the Legislature's continued detailed management of the deposit beverage container program may lead some companies to terminate their participation in the program. This bill mandates that redemption centers that are located in "high density" areas remain open 30 hours per week, of which at least 5 hours must be on Saturday or Sunday. Private businesses that are voluntarily operating as redemption centers in the deposit beverage container program have expressed concerns that this provision will force them to operate without adequate staff and expose them to liability if they are unable to remain open.

On balance, however, I feel that Hawaii families and other residents would suffer more harm if this bill does not become law. Currently, section 342G-102, Hawaii Revised Statutes, provides that if the redemption rate exceeds 70% for a particular fiscal year, then the non-refundable container fee will increase to 1.5 cents per container. This bill authorizes the Director of Health to temporarily suspend this automatic increase if, after consultation with the Auditor, it is determined that the Deposit Beverage Container Special Fund contains sufficient funds. This discretion is necessary to ensure that Hawaii residents do not have to pay more for the administration of the deposit beverage container program.

This year, I sought comprehensive amendments to the deposit beverage container program that would have eliminated the non-refundable container fee and would have allowed consumers to redeem their bottles at retailers. This approach would have eliminated the State's role in the administration of the program. It is unfortunate that the Legislature did not enact this proposed bill.

I remain convinced that the best way to protect our environment is through comprehensive curbside recycling programs of all recyclable products. Our experience with this deposit beverage container law has now borne out this conclusion. The program has collected more than \$50 million in fees and deposits over the past three years and yet it addresses only a small fraction, about 2%, of the waste in Hawaii. It would be more cost-effective to phase out this law and to use the accumulated funds to implement comprehensive curbside recycling programs.

Accordingly, for the foregoing reasons, I allowed Senate Bill No. 1026 to become law as Act 285, effective July 10, 2007, without my signature.

Sincerely,



LINDA LINGLE

ACT 285

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

S.B. NO. 1026
S.D. 2
H.D. 3
C.D. 1

A BILL FOR AN ACT

RELATING TO SOLID WASTE.

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

1 SECTION 1. The governor vetoed S.B. No. 3181, C.D. 1
2 (2006), based primarily upon the difficulty of redeeming and
3 recycling the sixty-eight-fluid-ounce containers. The
4 legislature finds that the widespread use of sixty-eight-fluid-
5 ounce bottles warrants their inclusion in the deposit beverage
6 container program, notwithstanding technical obstacles that can
7 be remedied over time. Currently, containers up to sixty-four-
8 fluid-ounce are included in the deposit beverage deposit
9 redemption program without recycling challenges. Sixty-eight-
10 fluid-ounce containers, which are comprised of mainly of two
11 liter soda and water drinks, are of the same recyclable
12 composition as sixty-four-fluid-ounce containers and there is no
13 logical reasoning for its exclusion because of a four-ounce
14 difference in size.

15 The purpose of this Act is to, among other things, increase
16 the size of the eligible deposit beverage container and to allow
17 the director of health some discretion in temporarily suspending



1 the deposit beverage container handling fee if it is determined
2 that the deposit beverage container deposit special fund
3 contains sufficient funds.

4 SECTION 2. Section 342G-101, Hawaii Revised Statutes, is
5 amended by amending the definition of "deposit beverage
6 container" to read as follows:

7 "Deposit beverage container" means the individual,
8 separate, sealed glass, polyethylene [~~terephthalate,~~
9 terephthalate, high density polyethylene, or metal container
10 less than or equal to [~~sixty-four~~] sixty-eight fluid ounces,
11 used for containing, at the time of sale to the consumer, a
12 deposit beverage intended for use or consumption in this State."

13 SECTION 3. Section 342G-102, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§342G-102 Deposit beverage container fee. (a) Beginning
16 on October 1, 2002, every deposit beverage distributor shall pay
17 to the department a deposit beverage container fee on each
18 polyethylene terephthalate, high density polyethylene, or metal
19 deposit beverage container manufactured in or imported into the
20 State. The fee shall be imposed only once on the same deposit
21 beverage container. The fee shall be 0.5 cents per deposit
22 beverage container.



1 (b) Beginning on October 1, 2004, every deposit beverage
2 distributor shall pay to the department a deposit beverage
3 container fee on each deposit beverage container manufactured in
4 or imported into the State. The deposit beverage container fee
5 shall not apply to deposit beverage containers exported for sale
6 outside of the State. The fee shall be imposed only once on the
7 same deposit beverage container. The fee shall be 1 cent per
8 deposit beverage container.

9 (c) No county shall impose or collect any assessment or
10 fee on deposit beverage containers for the same or similar
11 purpose that is the subject of this chapter.

12 (d) Beginning January 1, 2005, and every August 1
13 thereafter, the department shall notify deposit beverage
14 distributors in writing of the amount of the deposit beverage
15 container fee. The effective date of changes to the fee amount
16 shall be September 1. The fee shall be based on the redemption
17 rate calculated annually based on the redemption rate
18 information submitted to the department for the previous period
19 of July 1 through June 30. The fee amount shall be as follows:

20 (1) If the redemption rate is seventy per cent or less: 1
21 cent per container; and



1 (2) If the redemption rate is greater than seventy per
2 cent: 1.5 cents per container.

3 (e) The director may temporarily suspend an automatic
4 increase of the deposit beverage container fee if, after
5 consultation with the auditor, it is determined that the deposit
6 beverage container deposit special fund contains sufficient
7 funds for the purposes of section 342G-104 (b)."

8 SECTION 4. Section 342G-105, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[+]§342G-105[+] Deposit beverage container inventory
11 report and payment. (a) [~~Beginning October 1, 2002, payment~~]
12 Payment of the deposit beverage container fee and deposits as
13 described in section 342G-110 shall be made monthly based on
14 inventory reports of the deposit beverage distributors. All
15 deposit beverage distributors shall submit to the department
16 documentation in sufficient detail that identifies[-

17 ~~(1) The number of beverages in deposit beverage~~
18 ~~containers, by container size and type, manufactured~~
19 ~~in or imported to the State, and~~

20 ~~(2) The number of these deposit beverage containers, by~~
21 ~~container size and type, exported and intended for~~
22 ~~consumption out of the State during the reporting~~



1 ~~period.]~~ the net number of deposit beverage containers
2 sold, donated, or transferred, by container size and
3 type.

4 (b) The amount due from deposit beverage distributors
5 shall be the net number of deposit beverage containers [~~imported~~
6 ~~or manufactured into the State (the total number of containers~~
7 ~~imported or manufactured less the total number of containers~~
8 ~~exported for consumption outside the State)] sold, donated, or
9 transferred multiplied by the sum of the prevailing deposit
10 beverage container fee and the refund value of 5 cents. Payment
11 shall be made by check or money order payable to the "Department
12 of Health, State of Hawaii". All inventory reports and payments
13 shall be made no later than the fifteenth day of the month
14 following the end of the payment period of the previous month."~~

15 SECTION 5. Section 342G-111, Hawaii Revised Statutes, is
16 amended by amending subsection (c) to read as follows:

17 "(c) Each deposit beverage distributor shall generate and
18 submit to the department a monthly report on[+

19 ~~(1) The number of deposit beverage containers, by~~
20 ~~container size and type, manufactured in or imported~~
21 ~~into the State, and~~



1 ~~(2) The number of deposit beverage containers, by~~
2 ~~container size and type, exported and intended for~~
3 ~~consumption out of the State during the reporting~~
4 ~~period.]~~ the net number of deposit beverage containers
5 sold, donated, or transferred by container size and type. All
6 information contained in the reports, including confidential
7 commercial and financial information, shall be treated as
8 confidential and protected to the extent allowed by state law."

9 SECTION 6. Section 342G-112, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§342G-112 Deposit beverage container requirements.** (a)
12 Except as provided in subsection (b), every deposit beverage
13 container sold in the State shall clearly indicate the refund
14 value of the container and the word "Hawaii" or the letters
15 "HI". The names or letters representing the names of other
16 states with comparable deposit legislation may also be included
17 in the indication of refund value. The refund value on every
18 deposit beverage container shall be clearly, prominently, and
19 indelibly marked by painting, printing, scratch embossing,
20 raised letter embossing, or securely affixed stickers and shall
21 be affixed on the top or side of the container in letters at
22 least one-eighth inch in size.



1 (b) Subsection (a) ~~[does]~~ shall not apply to any type of
2 refillable glass deposit beverage container ~~[which]~~ that has a
3 brand name permanently marked on it and ~~[which]~~ that has the
4 equivalent of a refund value of at least 5 cents, which is paid
5 upon receipt of the container by a dealer or deposit beverage
6 distributor.

7 ~~[(c) All deposit beverage containers that do not indicate
8 the Hawaii refund value by January 1, 2005, and are intended for
9 sale shall be sold with stickers as specified in subsection (d).~~

10 ~~(d) Stickers that indicate the Hawaii refund value may be
11 purchased from the department from November 1, 2004, to
12 December 31, 2004. Surplus stickers may be redeemed at the
13 department by March 1, 2005. The cost of a sticker shall be
14 equal to the Hawaii refund value.]~~

15 (c) Containers that do not meet the definition of a
16 deposit beverage container, as specified in section 342G-101,
17 shall not indicate "Hawaii" or "HI" on the container."

18 SECTION 7. Section 342G-114, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§342G-114 Redemption centers. (a) Prior to operation,
21 redemption centers shall be certified by the department.



1 (b) Applications for certification as a redemption center
2 shall be filed with the department on forms prescribed by the
3 department.

4 (c) The department, at any time, may review the
5 certification of a redemption center. After written notice to
6 the person responsible for the establishment and operation of
7 the redemption center and to the dealers served by the
8 redemption center, the department, after it has afforded the
9 redemption center operator a hearing in accordance with chapter
10 91, may withdraw the certification of the center if it finds
11 that there has not been compliance with applicable laws, rules,
12 permit conditions, or certification requirements.

13 (d) Redemption centers shall:

- 14 (1) Accept all types of empty deposit beverage containers
15 for which a deposit has been paid;
- 16 (2) Verify that all containers to be redeemed bear a valid
17 Hawaii refund value;
- 18 (3) Pay to the redeemer the full refund value in either
19 cash or a redeemable voucher for all deposit beverage
20 containers, except as provided in section 342G-116;
- 21 (4) Ensure each deposit beverage container collected is
22 recycled through a contractual agreement with an out-



1 of-state recycler or an in-state recycling facility
2 permitted by the department; provided that this
3 paragraph shall not apply if the redemption center is
4 operated by a recycler permitted by the department;
5 [and]

6 (5) Remain open at least thirty hours per week in high
7 density population areas, of which at least five hours
8 shall be on Saturday or Sunday; and

9 ~~[-(5)-]~~ (6) Forward the documentation necessary to support
10 claims for payment as stated in section 342G-119.

11 (e) Redemption centers' redemption areas shall be
12 maintained in full compliance with applicable laws and with the
13 orders and rules of the department, including permitting
14 requirements, if deemed necessary, under chapter 342H.

15 (f) The department shall develop procedures to facilitate
16 the exchange of information between deposit beverage container
17 manufacturers, distributors, and retailers and certified
18 redemption centers, including but not limited to universal
19 product code information for reverse vending machine purposes.
20 The procedures developed by the department shall allow for a
21 reasonable time period between the introduction of a new deposit
22 beverage product and the deadline for submitting universal



1 product code information to certified redemption centers
2 operating reverse vending machines."

3 SECTION 8. Section 342G-115, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§342G-115 Reverse vending machine requirements. Reverse
6 vending machines may be used by redemption centers to satisfy
7 the requirements of section 342G-113. Reverse vending machines
8 shall accept any type of empty deposit beverage container and
9 pay out the full refund value in either cash or a redeemable
10 voucher for those containers that bear a valid Hawaii refund
11 value. If the reverse vending machine is unable to read the
12 barcode then the reverse vending machine shall reject the
13 container. The reverse vending machine shall be routinely
14 serviced to ensure proper operation and continuous acceptance of
15 empty deposit beverage containers and payment of the refund
16 value."

17 SECTION 9. Section 342G-116, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§342G-116 Refusal of refund value payment for a deposit
20 beverage container. Redemption centers shall refuse to pay the
21 refund value on any broken, corroded, or dismembered deposit
22 beverage container, or any deposit beverage container that:



- 1 (1) Contains a free-flowing liquid;
- 2 (2) Does not properly indicate a refund value; [eæ]
- 3 (3) Contains a significant amount of foreign material[-];
- 4 or
- 5 (4) Exhibits characteristics of having been previously
- 6 processed and baled."

7 SECTION 10. Section 342G-117, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsection (a) to read:

10 "(a) The department shall pay to each certified redemption
11 center a handling fee of not less than the prevailing deposit
12 beverage container fee for each deposit beverage container
13 redeemed by a consumer that is:

- 14 (1) Transported out-of-state;
- 15 (2) Received by an approved in-state company for an
16 approved end use for recycling; or
- 17 (3) Received by a department-permitted recycling
18 facility[-];

19 provided that the deposit beverage container is physically
20 received by the redemption center."

21 2. By amending subsection (c) to read:



1 "(c) The handling fee shall be paid in addition to the
2 refund value of each empty deposit beverage container. Payments
3 for handling fees shall be based on redemption center reports
4 submitted to the department; provided that there is no
5 discrepancy in the reports. The department may choose to pay
6 the handling fee and refund value on the basis of the total
7 weight of the containers received by material type and the
8 average weight of each container type[-]; provided that the
9 deposit beverage container is physically received by the
10 redemption center."

11 SECTION 11. The department of health shall phase-in all
12 requirements affecting the redemption of sixty-eight-fluid-ounce
13 containers, beginning December 1, 2007, as follows; provided
14 that the phase-in shall be completed by March 1, 2008:

15 (1) From December 1, 2007, distributors of deposit
16 beverage containers may begin marking sixty-eight-
17 fluid-ounce deposit beverage containers as required
18 under section 342-112(a), Hawaii Revised Statutes;

19 (2) From December 1, 2007, until March 1, 2008, a sixty-
20 eight-fluid-ounce deposit beverage container may be
21 redeemed under the deposit beverage container program,
22 without regard to whether the container bears the

1 refund value of the container and the word "Hawaii" or
2 the letter "HI", required by section 342G-112(a),
3 Hawaii Revised Statutes;

4 (3) Beginning March 1, 2008, every deposit beverage
5 container holding up to sixty-eight fluid ounces and
6 sold in the state shall be marked as required under
7 section 342G-112(a), Hawaii Revised Statutes; and

8 (4) Beginning March 1, 2008, only deposit beverage
9 containers meeting the requirements of section
10 342G-112(a), Hawaii Revised Statutes, shall be
11 eligible for redemption.

12 SECTION 12. (a) The legislature finds that the public
13 interest in protecting the environment takes precedence over the
14 delay in implementation of redemption of sixty-eight-fluid-ounce
15 beverage containers under this Act. The legislature finds that
16 the redemption rate is below the balance of the deposit beverage
17 container deposit special fund.

18 (b) The department of health shall reimburse a redemption
19 center, from the deposit beverage container deposit special
20 fund, the refund values paid to a redeemer, as defined in
21 section 342G-101, Hawaii Revised Statutes, for sixty-eight-
22 fluid-ounce containers redeemed between December 1, 2007, and



1 March 1, 2008, pursuant to section 11 of this Act; provided that
2 a redemption center shall provide collection reports under
3 section 342G-119, Hawaii Revised Statutes, for the sixty-eight-
4 fluid-ounce beverage containers.

5 SECTION 13. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 14. This Act shall take effect on July 1, 2007.

