

STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
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Testimony in SUPPORT of SB3138 SD1
RELATING TO INDEPENDENT AUDITS OF DEPOSIT BEVERAGE DISTRIBUTORS.

REPRESENTATIVE NICOLE E. LOWEN, CHAIR
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Hearing Date, Time, and Room Number: 03/19/2026, 9:40 AM, 325

1 **Fiscal Implications:** A majority of the deposit beverage container (DBC) distributors would save
2 on independent audit costs. The financial impact on the Department of Health (Department)
3 would be negligible.

4 **Department Position:** The Department supports this measure.

5 **Department Testimony:** The Environmental Management Division, Solid and Hazardous Waste
6 Branch provides the following testimony on behalf of the Department.

7 This measure limits the independent audit requirement to DBC distributors who each
8 annually import or distribute 5,000,000 or more DBCs in a calendar year.

9 Hawai'i Revised Statutes, Chapter 342G-121.5(c)(2) currently requires all DBC
10 distributors to obtain independent audits every year ending in an odd number. This
11 requirement was directly adopted from recommendation 3 of the Office of the Auditor's 2019
12 Financial and Program Audit of the Department of Health's Deposit Beverage Container
13 Program. The Auditor wrote that independent audit recommendation was made to increase
14 distributors' accountability for information provided to the DBC Program.

1 However, the Department recognizes that this requirement caused hardship to small
2 businesses. For many distributors, the cost of each audit is incongruent to the amount of
3 deposits and container fees paid to the Department; and in some cases, costs more than the
4 amount paid to the Department.

5 The Department believes that SB3138 SD1 strikes a balance between addressing the
6 Auditor’s concerns and alleviating the financial burden of our small business community. Based
7 on FY2025 data, there are about 322 DBC distributors. Using the tiered system described in the
8 measure and FY2025 data, the uppermost tier is represented by about five distributors, who
9 each sell 75 million or more DBCs per year. They would be required to conduct independent
10 audits every two years (the same as the current requirement). The middle tier is represented by
11 about 12 distributors, who each sell at least five million but less than 75 million DBCs per year.
12 They would be required to obtain an independent audit every five years. The remaining 305
13 distributors would be exempt from obtaining independent audits. Based on FY2025 data, the
14 independent audits will cover about 94% of the funds that are collected into the DBC program.
15 SB3138 SD1 also clarifies independent audit requirements, addressing a concern raised by the
16 regulated community.

17 **Offered Amendments:** None.

18 Thank you for the opportunity to testify on this measure.



17 March 2026

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Rep. Nicole E. Lowen, Chair
Rep. Amy A. Perruso, Vice Chair

Re: Support for SB3138 additional considerations

Aloha Chair, Vice Chair, and Members of the Committee:

My name is Garrett W. Marrero, I am the CEO and Co-Founder of Maui Brewing Co., operating locations in Lahaina, Kaanapali, and Kihei on Maui, and Waikiki and Kailua on Oahu. Made in Hawai'i and sold in 6 States and 2 Countries, employing more than 400 teammates across Hawai'i. I am submitting this testimony in **SUPPORT** of SB3138.

We appreciate the Legislature's and the Department of Health's willingness to engage with small businesses and industry stakeholders to address issues within the Deposit Beverage Container Program. We share the goal of improving transparency and program integrity.

Maui Brewing stands ready as an engaged manufacturer to support the crafting of these programs as they apply to small beverage producers in the State.

With that context, we are in **support of SB3138**. We appreciate the amendments made in SD1 that focus oversight where actual risk exists, modernize reporting, and protect small local producers from undue burden.

Mahalo for the opportunity to provide comments and for your consideration.

Sincerely,

Garrett W. Marrero
CEO and Co-Founder
Garrett@MauiBrewing.com
808.213.3007 office

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605 Lipoa Parkway, Kihei, HI 96753
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TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Limit Independent Audit Requirement for Deposit Beverage Container Program

BILL NUMBER: SB 3138 SD1

INTRODUCED BY: HHS

EXECUTIVE SUMMARY: Limits the independent audit requirement under the State's Deposit Beverage Container Program to deposit beverage distributors who distribute 5,000,000 or more deposit beverage containers a year. Identifies frequency of obtaining and submitting independent audits based on quantities of deposit beverage containers imported, manufactured, or distributed. Creates minimum requirements for independent audits. Effective 1/30/2050. (SD1)

SYNOPSIS: Adds a new section to chapter 342G, HRS, to require an independent audit of deposit beverage distributors as follows:

Number of containers distributed	Independent audit is required in...
More than 75 million	An even numbered year.
Between 5 million and 75 million	A year ending in 4 or 9
Less than 5 million	Audit not required

Provides criteria for the audit.

Amends section 342G-121.5, HRS, to delete the requirement for obtaining independent audits for years ending in an odd number. Additionally, requires the development of a web-based system to allow for online submissions of distributor's reports.

Makes other technical and conforming changes.

EFFECTIVE DATE: January 30, 2050.

STAFF COMMENTS: This is an Administration measure sponsored by the Department of Health and designated HTH-10 (26).

We urge that serious attention be given to fraud risk and the buildup of the fund balance, as described in [this article the Foundation published on Jan. 27, 2025](#):

Those Nickels Add Up!

By Tom Yamachika, President

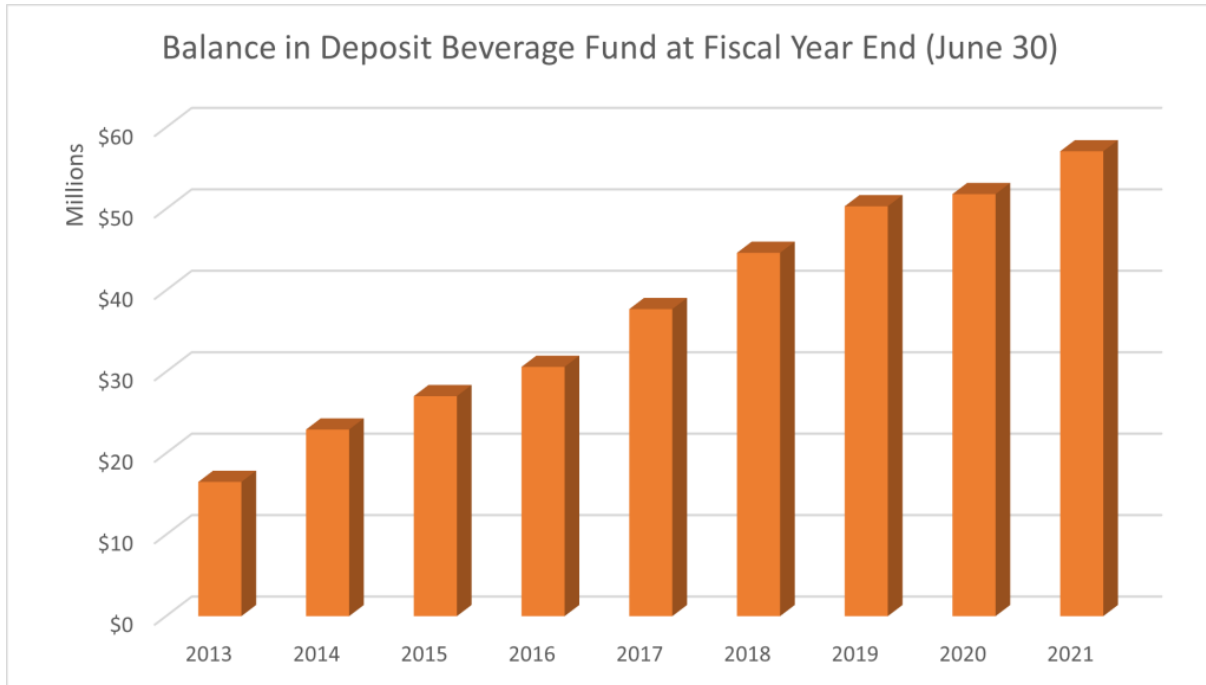
By now, most of us who go to the grocery store are used to seeing a bunch of little charges whenever we buy bottled or canned beverages. We get nicked for a nickel per container as a “deposit,” which theoretically is refundable if you bring the container back to the store or to a recycling center; and for a penny per container as a “fee,” which seems to disappear into a black hole.

The nickels and the pennies get collected by the Department of Health. The Department’s Solid Waste Branch runs the deposit beverage container program. The program collects a certain amount per container, like similar programs in other states, to promote container recycling. So, the pennies and the nickels go into a special fund, called the Deposit Beverage Container Deposit Special Fund (am I the only one who is bugged by the word “Deposit” appearing twice in that fund name?), established by HRS section 342G-104. The special fund is there to provide the money to run the program, making it self-sufficient, but there is a wrinkle. Section 342G-104(c) says, “Any funds that accumulate in the deposit beverage container deposit special fund shall be retained in the fund unless determined by the legislature to be in excess.” Meaning that the legislature expected that there would be extra money at some point, at which time the fund would be ripe for raiding.

But that assumes that the State doesn’t get raided first. We have written about this program and this fund before. The State Auditor’s Report No. 19-08 told the story of a staff worker for the accounting firm hired to do the fund’s financial audit. He dropped off a few bottles at the redemption center and received a whole 61 cents for his trouble. But the redemption center altered the log and claimed against the fund for reimbursement of 69 DOLLARS. And that wasn’t the only instance of fraud found.

The Department of Health also complained that fraud was a serious and real risk for the program, but we heard no stories of folks going to the hoosegow over this.

In the meantime, even with the fraud risk, the nickels in the fund started to pile up. Here is what the fund contained at the end of each fiscal year from 2013 to 2021:



Source: Office of the Auditor, Reports No. 15-02, 17-02, 19-08, 21-13, 23-07.

As of the end of 2021, there was more than fifty million bucks in the fund apparently sitting around doing nothing.

Now that our legislative session has started, therefore, we have an important message to lawmakers: “Hey! Those of you numbskulls who want to raise taxes! Shut up, take this \$50 million, and leave us taxpayers alone! And, by the way, try not to spend it all in one place!”

Digested: 2/23/2026

**Testimony to the House Committee on Energy & Environmental Protection
Representative Nicole E. Lowen, Chair
Representative Amy A. Perruso, Vice Chair**

**Thursday, March 19, 2026, at 9:40AM
Conference Room 325 & Videoconference**

RE: SB3138 SD1 Relating to Independent Audits of Deposit Beverage Distributors

Aloha e Chair Lowen, Vice Chair Perruso, and Members of the Committee:

My name is Sherry Menor, President and CEO of the Chamber of Commerce Hawaii ("The Chamber"). The Chamber supports Senate Bill 3138 Senate Draft 1 (SB3138 SD1), which limits the independent audit requirement under the State's Deposit Beverage Container Program to deposit beverage distributors who distribute 5,000,000 or more deposit beverage containers a year. Identifies frequency of obtaining and submitting independent audits based on quantities of deposit beverage containers imported, manufactured, or distributed. Creates minimum requirements for independent audits.

SB3138 SD1 aligns with our 2030 Blueprint for Hawaii: An Economic Action Plan, specifically under the policy pillar for Small Business. This bill promotes a revised auditing system that segments by deposit beverage distribution volume. This revision makes equitable considerations for audit frequency and improves the cost of doing business for business for small- and medium-sized operations.

This system is far more suitable for businesses of all scale, rather than one universal requirement that ignores a business's scale. With auditing frequency being the focal point of this legislation, the state can sensibly maintain auditing standards and procedures without overburdening small businesses that cannot pay for these audits at high frequency like larger distributors and that contribute less to the Deposit Beverage Container Program than larger distributors. The Chamber stands in strong support of legislation that extends equitable treatment to Hawaii's small businesses.

The Chamber of Commerce Hawaii is the state's leading business advocacy organization, dedicated to improving Hawaii's economy and securing Hawaii's future for growth and opportunity. Our mission is to foster a vibrant economic climate. As such, we support initiatives and policies that align with the 2030 Blueprint for Hawaii that create opportunities to strengthen overall competitiveness, improve the quantity and skills of available workforce, diversify the economy, and build greater local wealth.

We respectfully ask to pass Senate Bill 3138 Senate Draft 1. Thank you for the opportunity to testify.



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Gary Okimoto, Safeway, *Advisor*
Maile Miyashiro, C&S Wholesale, *Immediate Past Chair*

TO: Committee on Energy and Environmental Protection

FROM: HAWAII FOOD INDUSTRY ASSOCIATION

Lauren Zirbel, Executive Director

DATE: March 20, 2026

TIME: 9:40am

RE: SB3138 SD1 Relating to Independent Audits of Deposit Beverage Distributors

Position: Support

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, manufacturers and distributors of food and beverage related products in the State of Hawaii.

HFIA is in support of this measure. We'd like to thank the Governor for including this important measure in his package and the Committee for hearing it. As the measure notes, the way the independent audit requirement was implemented has caused extreme hardship for many beverage distributors, especially smaller local businesses. Some local businesses that manufacture and sell beverages locally have paid thousands for audits, sometimes paying more for audits than they contribute to the deposit beverage container program. Put simply this is untenable for these businesses.

We think it is important to note that no other state imposes a fixed, universal requirement that every distributor obtain an independent audit on a set biennial schedule regardless of risk; instead, other states rely on reporting, compliance oversight, and targeted enforcement mechanisms to maintain program integrity.

We believe the optimal solution would be to repeal unnecessary and disproportionate administrative burdens on deposit beverage distributors and redemption centers in the State, including the universal biennial independent audit requirement, while preserving the deposit beverage container program's existing risk-based accountability verification



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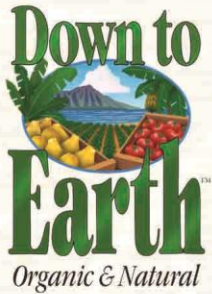
Gary Okimoto, Safeway, *Advisor*

Maile Miyashiro, C&S Wholesale, *Immediate Past Chair*

framework. SB2105 includes language for a repeal and we encourage the Committee to consider amending this measure to include that language.

We are in strong support of making the necessary changes to ensure that arbitrary audit requirements do not unnecessarily damage the local businesses that manufacture, distribute, supply, and sell beverages for Hawaii consumers. We thank you for the opportunity to testify.

Love Life!



SB3138 SD1 Relating to Independent Audits of Deposit Beverage Distributors
House Committee on Energy & Environmental Protection
March 19, 2026, 9:40am

Aloha Chair Representative Nicole Lowen, Vice Chair Amy Perruso, and committee members,

Down to Earth Organic & Natural **supports SB3138 SD1.**

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Down to Earth Organic & Natural is a Hawai'i-based natural and organic foods retailer that has served local communities for more than 45 years. Our six stores focus on organic and natural foods, local products, and values-based business practices. As part of our operations, we distribute deposit beverage containers and are a "distributor" in the Deposit Beverage Container (DBC) Program.

We appreciate the intent of SB3138 SD1 and the Legislature's recognition that the current independent audit requirement created serious hardship for beverage distributors, particularly small and local businesses. We support efforts to improve proportionality and fairness in program oversight, and we agree that the existing one-size-fits-all audit mandate is unreasonable, does not create benefits proportionate to its cost, was enacted without discussion with auditors as to their ability to conduct the audits, and is thus unworkable.

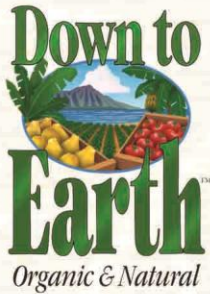
As implemented, the universal biennial independent audit requirement has imposed extreme and unnecessary financial burdens on distributors without a clear corresponding benefit to program integrity. Our audit quote from a local accounting firm was \$25,000—nearly half of the roughly \$60,000 we remit annually to the State in beverage deposits. We had paid \$15,000 of this fee before the audit requirement was put on hold. Audit firms were not consulted prior to its enactment and in practice it turned out that very few audit firms in Hawai'i were willing or able to perform these specialized audits that auditors had never done before, thus driving up audit costs, limited the availability of professionals to conduct the audits, and left some distributors unable to comply at all.

This requirement is layered on top of the Department of Health's existing authority to conduct audits when there is a specific concern (i.e., risk-based audits). Historically, fraud risk within the DBC Program has primarily been associated with redemption centers rather than distributors, yet the current law places substantial cost and administrative burden on compliant retailers and manufacturers. Even state and federal tax agencies do not require independent audits for income taxes and general excise taxes, which involve the collection of far larger revenues. In short, the cost of the audit requirement imposed on distributors was out of proportion to the revenue involved.

We are also concerned that the Department of Health does not have sufficient staffing or systems in place to meaningfully review and use these audits. DOH has acknowledged these challenges and suspended enforcement through Executive Order 25-04, and cancelled the September 30, 2025 audit deadline due to financial hardship for distributors. Unfortunately, some businesses, including ours, had already incurred significant audit expenses (in our case \$15,000 as mentioned above plus internal administrative cost) before enforcement was paused.

www.downtoearth.org

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While SB3138 SD1 takes an important step by narrowing and scaling audit requirements, we believe the most effective and equitable solution is to fully repeal the independent audit mandate and preserve the program's existing risk-based oversight framework. This approach is consistent with other states, which rely on reporting, targeted enforcement, and selective audits rather than fixed, universal audit schedules.

Accordingly, we respectfully request that the Committee consider amending SB3138 SD1 to include repeal language to permanently remove the mandatory independent audit requirement while maintaining DOH's authority to conduct audits when warranted. This would protect local businesses, help contain food and beverage costs for Hawai'i consumers, and allow state resources to be focused where they can do the most good.

Down to Earth supports thoughtful, practical policies that maintain accountability while being workable for local businesses and affordable for our communities. We appreciate the opportunity to testify on this important issue.

Mahalo for the opportunity to testify.

Alison E Riggs

Alison Riggs
Public Policy & Government Relations Manager
Down to Earth

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