

STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
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**Testimony in SUPPORT of H.B. 2341
RELATING TO FUNDING FOR THE TOBACCO ENFORCEMENT SPECIAL FUND**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

Hearing Date: February 14, 2024

Room Number: Conference Room 329
and via Videoconference

1 **Fiscal Implications:** The Department of Health (DOH) defers to the Department of Taxation
2 (DOTAX) and the Department of the Attorney General (AG) for fiscal implications related to this
3 measure.

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

5 **Department Testimony:** The DOH supports House Bill 2341 (H.B. 2341) as a public health
6 measure to ensure sustainability of the State's tobacco enforcement activities and compliance
7 requirements. H.B. 2341 proposes to increase the amount of funds that the tobacco
8 enforcement special fund can carry over, increases cigarette tax stamp fees, increases the
9 percent allocated to the tobacco enforcement special fund, and increases the sum of money
10 received from the tobacco settlement special fund (TSSF).

11 The nexus between the DOH and the AG Tobacco Enforcement Unit (TEU) began when
12 the State of Hawaii joined in the multi-state suit against the tobacco manufacturers. The public
13 health and economic cost of smoking was increasing with almost one in five adults and nearly
14 one in three youth smoking by 1997.¹ Hawaii with forty-six other states agreed on the Master

¹ Hawaii Department of Health. 1997 Hawaii Behavioral Risk Factors Surveillance System, and 1997 Youth Risk Behavior Survey.

1 Settlement Agreement (MSA) with the tobacco manufacturers with the intent of furthering,
2 “policies designed to reduce youth smoking, to promote the public health and to secure
3 monetary payments to the Settling States.”² The AG Tobacco Enforcement special fund
4 portion, used for the diligent enforcement of the MSA is described in §328L-2(a), and the
5 remaining portion of the TSSF is distributed by the DOH pursuant to §328L-2(b), Hawaii Revised
6 Statutes (HRS).

7 Sufficient funding for the AG tobacco enforcement special fund will assure the diligent
8 enforcement of the tobacco MSA including requirements in Chapters 486P and 675, HRS, so
9 Hawaii remains in compliance as a settling state. The impact of negligence due to shortfalls in
10 the AG TEU may have negative consequences for the annual payment to Hawaii from the MSA
11 with cascading public health consequences for tobacco prevention and cessation services in
12 Hawaii provided through the Hawaii tobacco prevention and control trust fund that are funded
13 through the TSSF. The other portions to be negatively impacted are to the emergency and
14 budget reserve fund, university revenue-undertakings fund, and the state general fund.

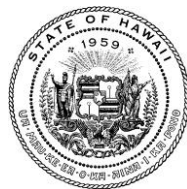
15 Thank you for the opportunity to testify.

16 **Offered Amendments:** None

² Master Settlement Agreement. January 2019 Printing. (retrieved 2-06-23:
<https://naagweb.wpenginepowered.com/wp-content/uploads/2020/09/2019-01-MSA-and-Exhibits-Final.pdf>

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



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DEPARTMENT OF TAXATION

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GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 2341, Relating to Funding for the Tobacco Enforcement Special Fund.

BEFORE THE:

House Committee on Health & Homelessness

DATE: Wednesday, February 14, 2024

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 329

Chair Belatti, Vice-Chair Takenouchi, and Members of the Committee:

The Department of Taxation (“Department”) offers the following comments regarding H.B. 2341, an Administration measure, for your consideration.

Section 2 of the bill amends section 28-15(c), Hawaii Revised Statutes (HRS), to increase the amount of funds in the Tobacco Enforcement Special Fund (TESF) that the Tobacco Enforcement Unit within the Department of the Attorney General may carry over at the end of each fiscal year, from \$500,000 to \$750,000.

Section 3 of the bill amends section 245-26(a), HRS, by increasing cigarette stamp fees from 1.7 to 2.2 percent of the denominated value of each stamp sold, with the additional fees being deposited to the TESF.

Section 4 of the bill amends section 328L-2, HRS, to increase the amount of funds from tobacco settlement moneys received by the State each fiscal year to be deposited into the TESF from \$350,000 to \$750,000.

The measure has an effective date of July 1, 2024.

The Department is able to administer the changes in section 3 of the bill as drafted.

Thank you for the opportunity to provide testimony in support of this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2341, RELATING TO FUNDING FOR THE TOBACCO ENFORCEMENT SPECIAL FUND.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

DATE: Wednesday, February 14, 2024 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department of the Attorney General (Department) strongly supports this bill and offers the following comments.

The purpose of this bill is to stabilize funding for the Tobacco Enforcement Unit (Unit) within the Department by increasing the amount of funds that the Tobacco Enforcement Special Fund (Special Fund) can carry over at the end of the fiscal year from \$500,000 to \$750,000; increasing a portion of the cigarette tax stamp fee allotted to the Special Fund from 1.5 percent to 2.0 percent, thereby increasing the total cigarette stamp fee from 1.7 percent to 2.2 percent; and increasing the sum of moneys received into the Special Fund from the tobacco Master Settlement Agreement (MSA) annual payment from \$350,000 to \$750,000. Any remaining funds in excess of the carried-over amount will continue to lapse to the general fund at the end of each fiscal year.

In 1998, Hawaii and 45 other states signed the MSA with the four largest tobacco manufacturers in the United States to settle smoking-related claims. The MSA stipulated that these manufacturers provide annual payments to the signing states, including Hawaii. Hawaii's MSA payment for fiscal year 2022-2023 was over \$40.8 million. The MSA requires states to diligently enforce the requirements of the "model

statute," which Hawaii enacted as the Tobacco Liability Act, chapter 675, Hawaii Revised Statutes (HRS).

Under the MSA, tobacco manufacturers can contest the diligent enforcement of states, leading to arbitration. It is crucial to diligently enforce the Tobacco Liability Act, because failure to do so may result in Hawaii losing a significant portion of its MSA payments. Recent arbitration decisions found Washington and Missouri non-diligent and placed their annual MSA payments at risk. These decisions make it clear that the Unit needs to stabilize funding to maintain and further its diligent enforcement efforts and reduce the risk of losing MSA funds as a result of future arbitrations.

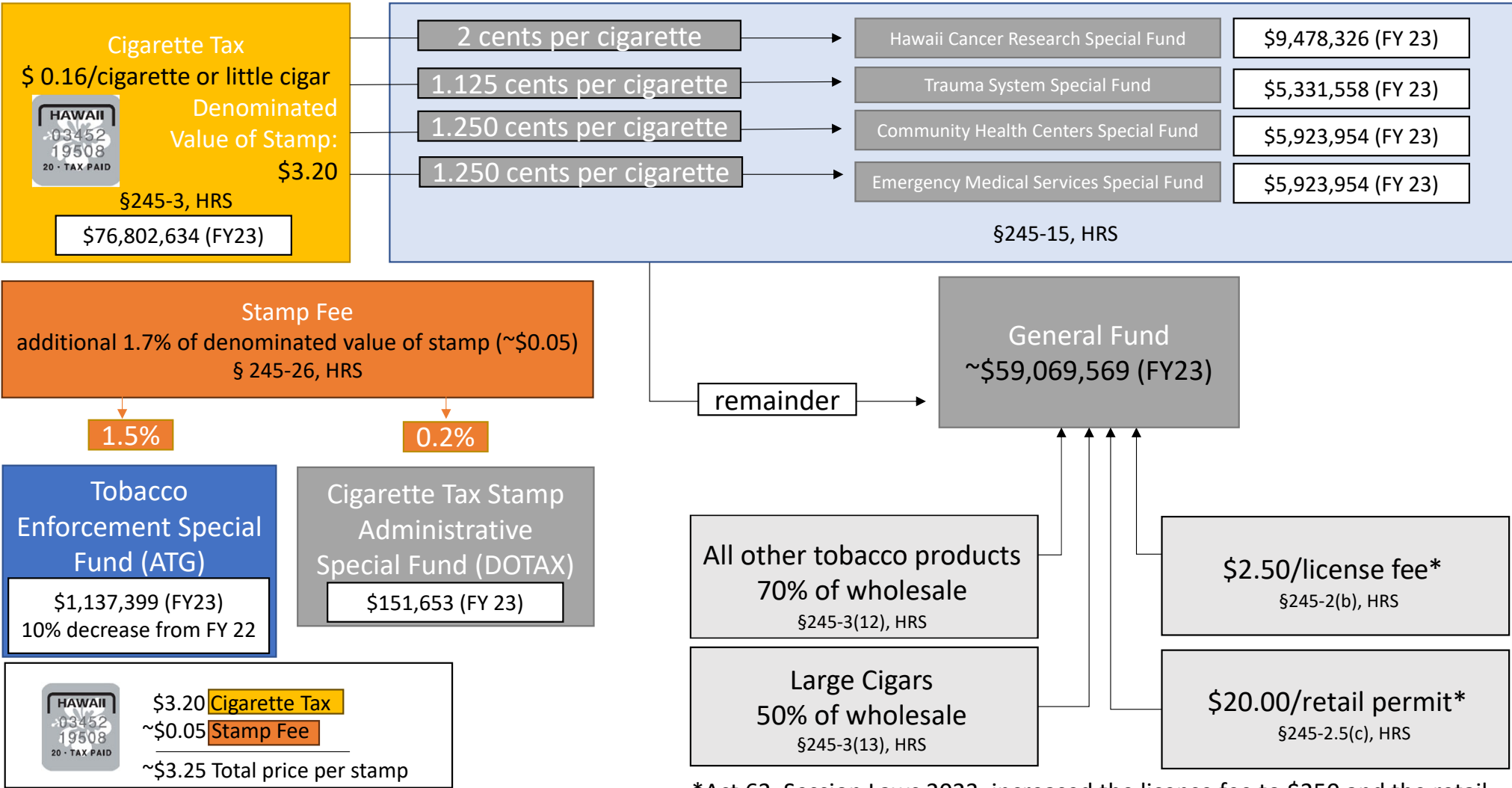
The Legislature established the Special Fund in 2001 for the Department to administer, monitor, and enforce the MSA, the cigarette tax stamp program, and any other related statutes or programs (see section 28-15(a), HRS). The Special Fund receives \$350,000 of the MSA annual payment (see section 328L-2, HRS). At the close of each fiscal year, up to \$500,000 carries over to the Special Fund for the next fiscal year, and the remainder lapses to the credit of the state general fund (see section 28-15(c), HRS). The majority of the Special Fund's revenue is derived from a percentage of the cigarette tax stamp fees collected (see section 245-26(a)(2), HRS).

Cigarette tax stamp revenues have plummeted from over \$116 million in fiscal year 2015-2016 to just over \$78 million in fiscal year 2022-2023. The cigarette tax stamp fee revenues deposited into the Special Fund have similarly dropped – from \$1.74 million in fiscal year 2015-2016 to \$1.13 million in fiscal year 2022-2023. This downward trend is expected to continue and, if it does, the Special Fund will be unable to cover the Unit's expenditures in the near future. Despite this decline in revenue resources, the Unit's responsibilities to enforce the MSA remain the same. This bill will provide more funding stability in anticipation of further reductions in cigarette tax revenues, allowing the Unit to maintain the resources necessary for the required diligent enforcement and to prepare for arbitration.

The attached chart demonstrates the flow of the cigarette and tobacco tax and license money and the effect of this bill on the funding stream.

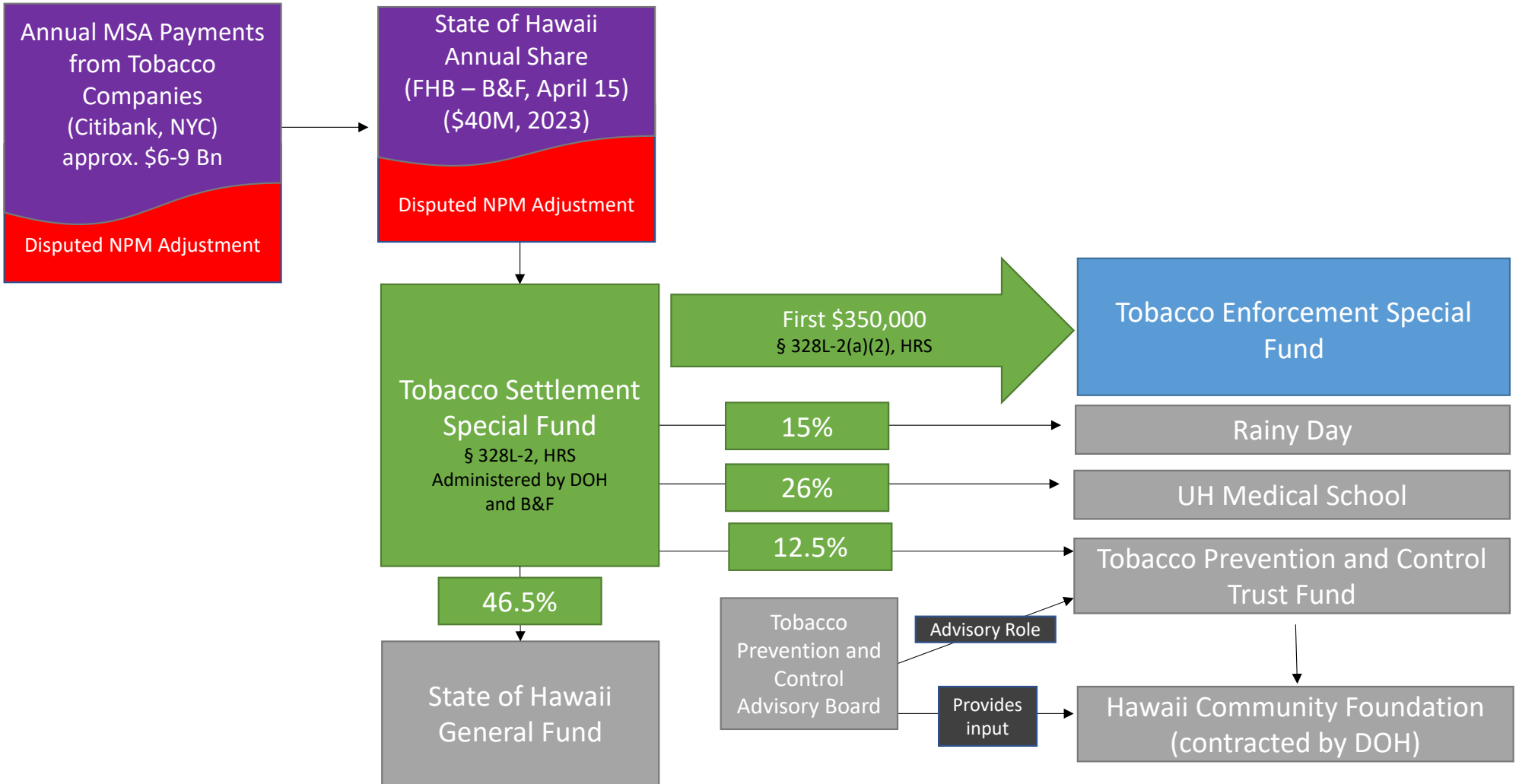
We respectfully urge the Committee to pass this bill and thank you for this opportunity to testify.

CIGARETTE AND TOBACCO TAX AND LICENSE MONEY

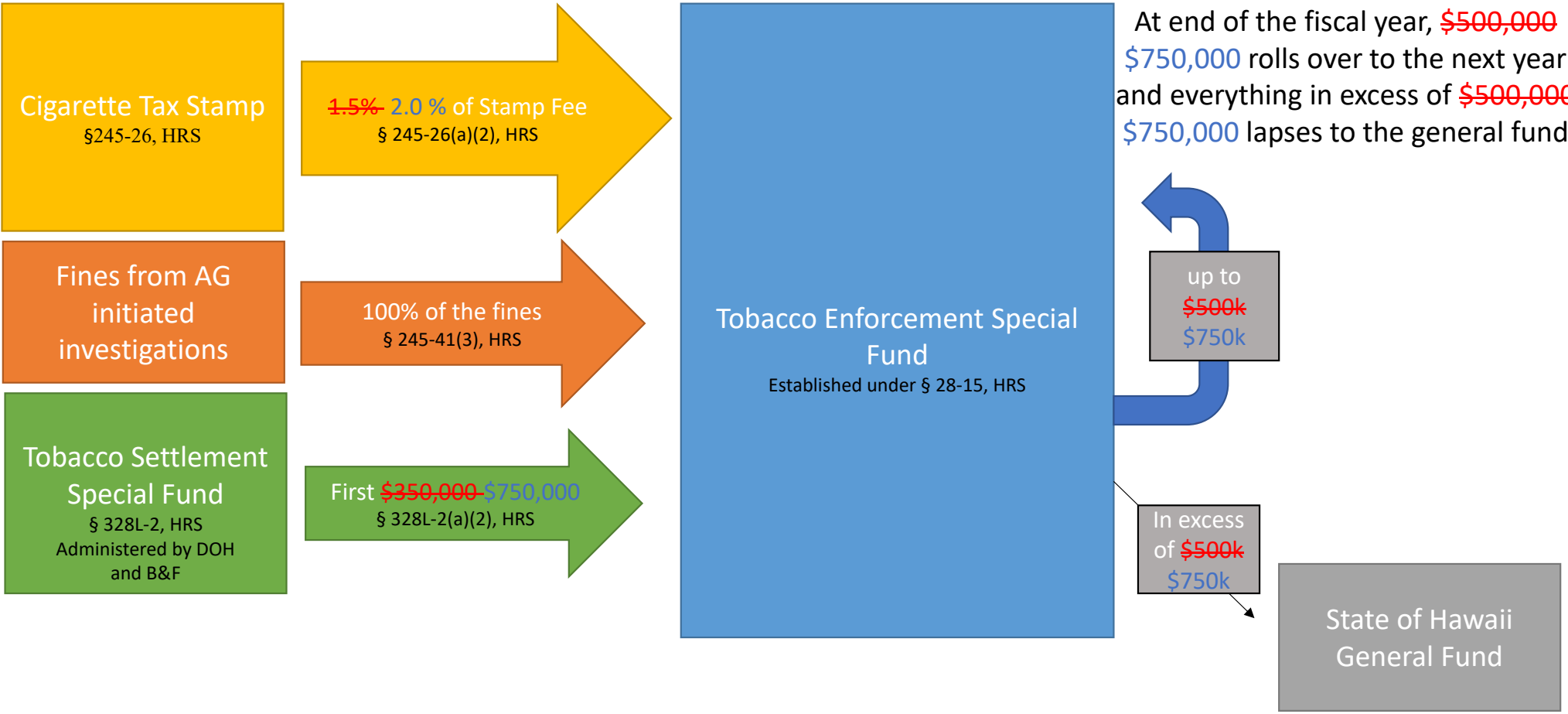


*Act 62, Session Laws 2023, increased the license fee to \$250 and the retail tobacco permit fee to \$50, effective 7/1/23. Effective 1/1/24, electronic smoking devices and e-liquids will be taxed at 70% of wholesale.

TOBACCO MASTER SETTLEMENT AGREEMENT



SUMMARY OF ATG-02(24)





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State of Hawai'i, Deputy Public
Defender

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Coalition for a
Tobacco-Free Hawai'i

Community Health
Worker Initiative

COVID-19 Response

Hawai'i Drug & Alcohol-Free
Coalitions

Hawai'i Farm to School Hui

Hawai'i Oral Health Coalition

Hawai'i Public Health Training Hui

Healthy Eating + Active Living

Kūpuna Collective

Date: February 12, 2024

To: Representative Della Au Belatti, Chair
Representative Jenna Takenouchi, Vice Chair
Members of the Committee on Health & Homelessness

Re: Support HB 2341 Relating to Funding For the Tobacco
Enforcement Special Fund

Hrg: Wednesday, February 14, 2024 at 8:30 AM

The Coalition for a Tobacco-Free Hawai'i, a program of the Hawai'i Public Health Institute¹ is in **Support of HB 2341**, which would stabilize and increase funding for the tobacco enforcement unit within the Department of the Attorney General through several ways. It will increase the amount of funds that the tobacco enforcement special fund can carry over at the end of the fiscal year; increase the cigarette tax stamp fee and concurrently increase the percentage of the cigarette tax stamp fee deposited to the tobacco enforcement special fund; and amend the amount of funds to be deposited in the tobacco enforcement special fund from the Hawaii tobacco settlement special fund.

This bill will support the work of the tobacco enforcement unit within the Department of the Attorney General. The tobacco enforcement unit administers, monitors, and enforces the tobacco master settlement agreement and related Hawai'i laws. The funding for supporting this unit has decreased over time because of the reduced number of cigarette sales.

The decrease in cigarette use is hopeful, and the trend is expected to continue. One day, that number could be zero by taking a comprehensive approach to regulating cigarettes through taxes, regulation, licensing and permitting, and enforcement. By increasing access to funding, the Enforcement Unit will continue to do its job, supporting that comprehensive approach.

Thank you for considering HB 2341 and other policies that support a comprehensive approach to tobacco regulation.

Mahalo,

A handwritten signature in black ink that reads "Peggy Mierzwa". The signature is written in a cursive style and is set against a light blue rectangular background.

Peggy Mierzwa
Policy & Advocacy Director
Hawai'i Public Health Institute

ⁱ The Coalition for a Tobacco-Free Hawai'i (Coalition) is a program of the Hawai'i Public Health Institute (HIPHI) dedicated to reducing tobacco use through education, policy, and advocacy. With more than two decades of history in Hawai'i, the Coalition has led several campaigns on enacting smoke-free environments, including being the first state in the nation to prohibit the sale of tobacco and electronic smoking devices to purchasers under 21 years of age.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TOBACCO; Cigarette Tax Stamp Fees; Tobacco Enforcement Special Fund; Hawai'i Tobacco Settlement Special Fund

BILL NUMBER: HB 2341, SB 3030

INTRODUCED BY: HB by SAIKI; SB by KOUCHI (Governor's Package)

EXECUTIVE SUMMARY: Amends the amount of funding for the Tobacco Enforcement Special Fund administered by the Department of the Attorney General by amending the amount of funds that the Tobacco Enforcement Special Fund can carry over at the end of the fiscal year; increasing the cigarette tax stamp fee and concurrently increasing the percentage of the cigarette tax stamp fee deposited to the Tobacco Enforcement Special Fund; and amending the amount of funds to be deposited to the credit of the Tobacco Enforcement Special Fund from tobacco settlement moneys.

SYNOPSIS: Amends section 28-15, HRS, to allow the tobacco enforcement special fund to accumulate funds up to \$750,000 (up from \$500,000) without the excess lapsing to the general fund.

Amends section 245-26, HRS, to increase the stamp fee from 1.7% to 2.2% of the value of tax stamps sold, and to route the additional 0.5% to the tobacco enforcement special fund.

Amends section 328L-2, HRS, to increase the earmark on tobacco settlement moneys to the tobacco enforcement special fund from \$350,000 to \$750,000 per fiscal year.

EFFECTIVE DATE: July 1, 2024.

STAFF COMMENTS: This is an Administration bill sponsored by the Department of Attorney General and designated ATG-02 (24).

The question that should be asked is what the purpose of the tobacco tax is. If the goal is to make people stop smoking by making it cost-prohibitive to smoke, then (a) it's working, as hikes in the cigarette tax have begun to exert downward pressure on collections not only locally but also nationally, but (b) it shouldn't be expected to raise revenue, because of (a). If the goal is really to stop the behavior, why are we not banning it?

As the Foundation's previous President, Lowell Kalapa, wrote in the Tax Foundation of Hawaii's weekly commentary on October 28, 2012:

Lawmakers seem to have a simplistic reaction to solving problems the solution to which plagues their constituents – tax it.

Probably the best example is what people like to call sin taxes, those excise taxes that are levied on tobacco and alcohol products. After all, smoking causes cancer and alcohol

causes all sorts of problems including driving under the influence. Lawmakers and community advocates shake their heads and push for higher tax rates, arguing that making these products more expensive will deter folks from using these products.

The problem is that lawmakers also like the revenues that are generated from the sales of these products and, in some cases, they have tried to link the use and sale of these products with noble causes such as the funding of the Cancer Research Center that is currently being built. Again, the argument is that smokers should pay for programs and projects which seek to cure the related ill which in this case is cancer caused by smoking.

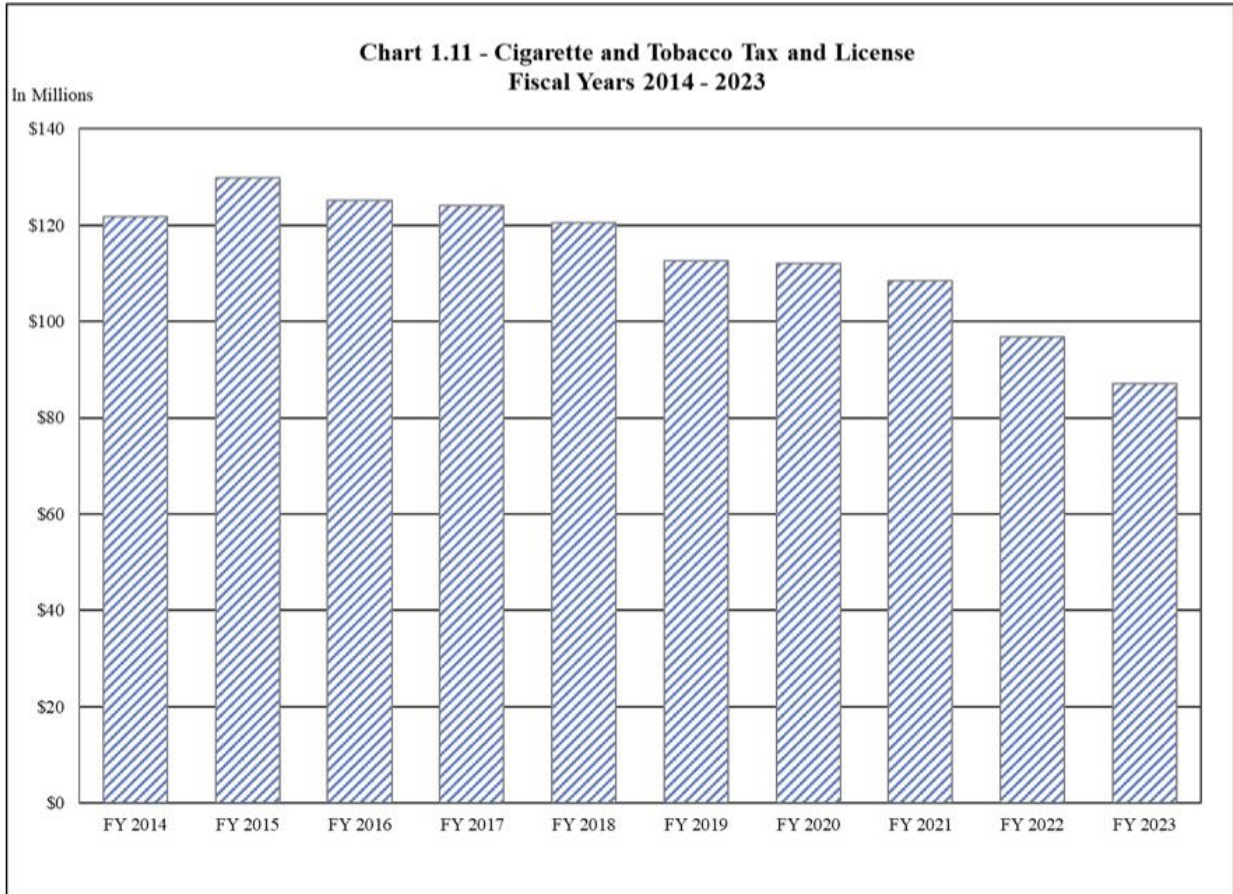
The irony is that arguments to increase the tax on tobacco and, more specifically, cigarettes, is a goal of getting smokers to quit while depending on the revenues from tobacco and cigarette taxes to fund an ongoing program, in this case the Cancer Research Center. So, which is it folks, stop smokers from smoking and if successful, there won't be any revenues to fund the Cancer Research Center?

The fact of the matter is that it appears that both locally and nationally, higher taxes on cigarettes are influencing smokers as tax collections on the sale of cigarettes have fallen. Certainly, some of the decline is due to smokers actually quitting, but to some degree one has to suspect that some purchases were made via mail order from exempt Indian reservation outlets while others may be what is called gray market purchases, that is from sources outside the country.

What should come as a surprise is that most of the folks who have quit are of some means as they are more likely to recognize the health hazard caused by use of this product. That means most of those who are still smoking are among the lower-income members of our community. Thus, the tax is regressive, generating less and less collections from middle and higher-income individuals.

Kalapa, "Finding the Blame for What Ails You," at <https://www.tfhawaii.org/wordpress/blog/-2012/10/finding-the-blame-for-what-ails-you/> (Oct, 28, 2012).

As predicted, programs that have been fed by earmarks from the tobacco tax, like the Cancer Research Center, have become a victim of the success of tobacco cessation programs and publicity. Revenues produced by the tobacco tax have been in steady decline over the past few years despite tax rate increases and hoisting the smoking age to 21 in the 2015 session certainly didn't reverse the trend.



Source: Department of Taxation Annual Report (2022-2023), page 24.

Fiscal reliance on funds from a sin tax is inadvisable, perhaps outright dangerous. If the goal is to affect social behavior, use of the tax law is not the most effective way to do so.

Digested: 2/12/2024



fightcancer.org

House Committee on Health and Homelessness
Representative Della Au Belatti, Chair
Representative Jenna Takenouchi, Vice Chair

Hearing Date: Wednesday, February 14, 2024

**ACS CAN SUPPORTS HB 2341 – RELATING TO FUNDING FOR THE
TOBACCO ENFORCEMENT SPECIAL FUND.**

Cynthia Au, Government Relations Director – Hawaii Guam
American Cancer Society Cancer Action Network

Thank you for the opportunity to **SUPPORT** HB 2341: RELATING TO FUNDING FOR THE TOBACCO ENFORCEMENT UNIT.

The American Cancer Society Cancer Action Network (ACS CAN) is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. ACS CAN supports efforts to invest in comprehensive policies that would strengthen the health infrastructure in Hawaii to prevent kids from starting to use tobacco and help adults already addicted to tobacco to quit.

Lung cancer remains the leading cause of cancer deaths in Hawaii with an estimated 1,400 adults dying from smoking every year.ⁱ There are 21,000 keiki who are alive now that will die prematurely due to smoking-related disease.ⁱⁱ Tobacco use remains the leading preventable cause of death nationwide. ACS CAN supports increasing funding to ensure effective enforcement of the tobacco Master Settlement Agreement and related laws as well as enforcing the cigarette tax stamp program.

Thank you for the opportunity to comment on this important matter. Should you have any questions, please do not hesitate to contact Cynthia Au at 808.460.6109, or Cynthia.au@cancer.org.

ⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in Hawaii. Updated January 20, 2023. <https://www.tobaccofreekids.org/problem/toll-us/hawaii>
ⁱⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in Hawaii. Updated January 20, 2023. <https://www.tobaccofreekids.org/problem/toll-us/hawaii>