



**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. 2806, H.D. 1, RELATING TO OPIOID LITIGATION PROCEEDS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 14, 2024 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Michelle E. Nakata, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

The purposes of this bill are to: (1) establish a Hawaii Opioid Litigation Proceeds Council (Council) placed within the Department of Health for administrative purposes only to ensure that the proceeds received by the State are allocated and spent on substance use abatement and treatment; (2) establish a Hawaii Opioid Litigation Proceeds Special Fund; and (3) appropriate funds for three full-time positions within the Department of Health.

Section -5(b) of the new chapter proposed to be added to the Hawaii Revised Statutes by section 2 of this bill, on page 10, lines 7-14, grants the Council authority to “ensure that the proceeds received by the State . . . are allocated and spent on substance use disorder abatement infrastructure, programs, services, supports, and resources for prevention, treatment, recovery, and harm reduction; and to ensure robust public involvement, accountability, and transparency in allocating and accounting for moneys in the fund.” The Hawai'i Constitution places such responsibility for enforcing state law squarely within the executive branch. See Haw. Consti. art. V, § 5 (“The governor shall be responsible for the faithful execution of the laws.”).

Paragraphs (4) and (5) of subsection (c) of section -5, on page 11, lines 1-4, however, require one member of the Senate to be appointed directly by the President of

the Senate, and one member of the House to be directly appointed by the the Speaker of the House of Representatives, to the Council. These appointments made directly by the Legislature's leaders appear to be subject to challenge as being in violation of the separation of powers doctrine, because it grants the Legislature the power to appoint members of a Council that exercises a purely executive branch function. Here, the Council will be allocating and making decisions on spending opioid litigation proceeds, which is an executive branch function. "Hawaii's government is one in which the sovereign power is divided and allocated among three co-equal branches. The doctrine provides that a branch may not exercise powers not so constitutionally granted, which from their essential nature, do not fall within its division of governmental functions, unless such powers are properly incidental to the performance by it of its own appropriate functions." Hawaii Insurers Council v. Lingle, 120 Hawai'i 51, 69-70 (2008) (citations and internal quotes omitted).

In State v. Bennett, 547 P.2d 786 (Kan. 1976), the Attorney General in Kansas brought an action to oust legislative members of the state finance council. The council oversaw the operations of a major executive department. Id. at 794. The Attorney General argued that the council's four legislatively appointed seats on the council violated the separation of powers doctrine. The Kansas court held that for those powers that were purely executive, the appointments were unconstitutional. Id. at 797.

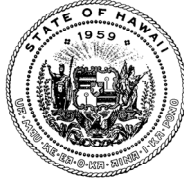
Thus, the legislative appointments to the Council in this bill appear to be subject to challenge as being unconstitutional. See, e.g., In re Okla. Dep't of Trans., 64 P.3d 546, 551-52 (Okla. 2002) (direct legislative appointments to committees that control executive functions violate the separation of powers doctrine); Greer v. Georgia, 212 S.E.2d 836, 838-839 (Ga. 1975) (direct legislative appointment violated the separation of powers doctrine).

To resolve this issue, we recommend deleting the current paragraphs (4) and (5) of subsection (c) at page 11, lines 1-4, redesignating the current paragraphs (6) and (7) as paragraphs (4) and (5), and inserting new paragraphs (6) and (7) to read: "(6) One member appointed by the governor from a list of nominees submitted by the president

of the senate;” and “(7) One member appointed by the governor from a list of nominees submitted by the speaker of the house of representatives;”

In addition, we suggest that paragraph (8) of subsection (c), on page 11, lines 11-13, be amended to delete “upon application to, and approval by”, which is already part of the usual board member application process, and to have appointment by the Governor be expressly required as follows: “(8) Five community members appointed by the governor, who shall include: . . .”.

Thank you for the opportunity to provide comments.



STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony COMMENTING on HB2806 HD1
RELATING TO OPIOID LITIGATION**

REPRESENTATIVE DAVID TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

February 14, 2024, 2:00 PM Room Number: 325

1 **Fiscal Implications:** Undetermined

2 **Department Position:** The Department provides the following comments on this measure.

3 **Department Testimony:** The Alcohol and Drug Abuse Division (ADAD) provides the
4 following testimony on behalf of the Department.

5 The purpose of the bill is to provide transparency and ensure accountability in the expenditures of
6 opioid settlement funds by establishing an opioid litigation proceedings special fund; a proceeds
7 council to administer the special fund; purposes for the special fund; parameters for special fund
8 disbursements and other restrictions; guidelines for investing the special fund receipts; reporting
9 requirements for recipients and the department, terms to comply with uses of proceeds set by any
10 controlling court order; duties of the program director; and funds three-full-time equivalent
11 positions. The bill is based on model legislation developed to assist states in their efforts to
12 maximize funds available to address the opioid overdose crisis.

13 The Department of the Attorney General (AG) secured a Master Settlement Agreement that is
14 national in scope, as part of a multi-state suit against manufacturers and distributors of opioids
15 due to their roles in the nationwide opioid crisis. The existing State agreement with counties
16 under the Master Settlement Agreement was negotiated to include the Hawaii Opioid Settlement

1 Advisory Committee (HOSAC). It was established to fulfill expenditure oversight requirements
2 on proceeds relating to the settlement of opioid litigation (MOA). The HOSAC is comprised of:

- 3 • The mayor, or mayor's designee, from each of the following: the County of Hawai'i, the
4 County of Kaua'i, the County of Maui, and the City and County of Honolulu;
- 5 • A designee of the Director of the Department of Health;
- 6 • The director of the Department of Public Safety, or designee;
- 7 • The Superintendent of the Department of Education, or designee; and
- 8 • The University of Hawai'i Medical School President, or designee.

9 To date the HOSAC membership has:

- 10 • Established procedures for operating HOSAC meetings;
- 11 • Hired three full-time positions to support the opioid settlement program;
- 12 • Researched best practices to distribute the funds in a community driven transparent
13 manner; and
- 14 • Identified over \$13 million in planned spending on county and state-wide projects.

15 The allowable expenses of the settlement funds are very specific. The HOSAC is responsible for
16 ensuring all funds are spent within the parameters set out in the Master Settlement Agreement.

17 The Department offers the following comments.

- 18 • The terms require definition consistent with the parameters in the Master Settlement
19 Agreement.
- 20 • The bill does not supercede the state agreement with the counties because it is based on a
21 national Master Settlement Agreement.
- 22 • The council in the bill does not supplant the existing HOSAC as established by the
23 agreement between the State and counties. Therefore, the advisory committee and the
24 council will co-exist together and more parameters are needed on how they will work
25 together.
- 26 • At least two more positions in addition to existing opioid settlement staff are needed to
27 implement the bill.

1 The Department also offers the following amendments.

2 **Offered Amendments:** Page 2, lines 3-8 are amended to read:

3 The purpose of this Act is to require transparency and
4 ensure accountability through the creation of the Hawaii opioid
5 litigation proceeds council to oversee the Hawaii Opioid
6 Settlement Advisory Committee's (HOSAC) expenditure of all
7 opioid litigation proceeds received by the State as part of the
8 historic nationwide lawsuits holding entities responsible for
9 the opioid crisis devastating communities.

10

11 **Offered Amendments:** Section 2, § -1 is amended to read:

12 "Conflict of interest" means a financial association
13 involving a council member, HOSAC member, or the council or
14 HOSAC member's immediate family that has the potential to
15 influence a council or HOSAC member's actions, recommendations,
16 or decisions related to the disbursement of opioid litigation
17 proceeds or other council activity.

18 "Council" means the Hawaii opioid litigation proceeds
19 council.

20 "Department" means the department of health.

21 "Director" means the director of health.

22 "HOSAC" means the Hawaii Opioid Settlement Advisory
23 Committee as described in the Memorandum of Agreement between

1 the State of Hawaii and local governments on proceeds relating
2 to the settlement of opioid litigation ("MOA"), also referred to
3 as the State-Subdivision Agreement, as amended.

4 "Opioid Remediation" shall have the meaning and uses set
5 forth in Exhibit "A" of the MOA.

6 "Special fund" or "fund" means the Hawaii opioid litigation
7 proceeds special fund.

8 "Substance use disorder" means a pattern of use of alcohol
9 or other substances that meets the applicable diagnostic
10 criteria delineated in the most recent publication of the
11 Diagnostic and Statistical Manual of Mental Disorders of the
12 American Psychiatric Association, or in any subsequent editions.

13

14 **Offered Amendments:** Section 2, § -2 is amended to read:

15 **§ -2 Hawaii opioid litigation proceeds special**

16 **fund.** (a) There is established in the state treasury the
17 Hawaii opioid litigation proceeds special fund, to be
18 administered by the council and into which shall be deposited
19 the following moneys:

20 (1) All opioid litigation proceeds received by the State,
21 regardless of whether the proceeds are received as a lump sum or
22 series of payments to be made over a period of time;

23 (2) Appropriations made by the legislature;

1 (3) Gifts, donations, grants, bequests, and other moneys
2 received by the State on the fund's behalf; and

3 (4) All interest earned or accrued from the investment of
4 the moneys in the fund.

5 (b) The moneys in the special fund shall be expended for
6 the following purposes:

7 (1) At least 85% of the fund to address opioid related
8 remediation consistent with Exhibit "A" of the MOA;

9 (2) Up to 15% of the fund to address remediation for other
10 substance use disorders, not limited to opioids;

11 (3) Moneys received into the fund under Section 2(a)(2),
12 2(a)(3), and 2(a)(4) shall be utilized for any opioid
13 remediation purpose as deemed necessary by the council.

14 [~~1~~] (3) Disbursement of funds allocated to the counties
15 as their share of opioid litigation proceeds;

16 [~~2~~] (4) The administration and staffing of the council,
17 HOSAC, and special fund; provided that no more than eight per
18 cent of the fund's annual balance, as determined on December 31
19 of each year, shall be expended for this purpose;

20 [~~3~~] (5) The management, investment, and disbursement of
21 moneys from the special fund; provided that no more than two per
22 cent of the fund's annual balance, as determined on December 31
23 of each year, shall be expended for this purpose; and

1 ~~[-(4)]~~ (6) All spending with funds from the opioid
2 settlement moneys will be decided by ~~Subject to~~ majority
3 approval of both the HOSAC and the council; [~~, the following~~
4 ~~substance use disorder abatement purposes:~~

5 ~~(A) Statewide or community substance use disorder~~
6 ~~needs assessments to identify structural gaps and~~
7 ~~needs to inform expenditures from the fund;~~

8 ~~(B) Infrastructure required for evidence-based~~
9 ~~substance use disorder prevention, treatment,~~
10 ~~recovery, or harm reduction programs, services,~~
11 ~~and supports;~~

12 ~~(C) Programs, services, supports, and resources for~~
13 ~~evidence-based substance use disorder prevention,~~
14 ~~treatment, recovery, or harm reduction;~~

15 ~~(D) Evidence-informed substance use disorder~~
16 ~~prevention, treatment, recovery, or harm~~
17 ~~reduction pilot programs or demonstration studies~~
18 ~~that are not evidence-based but are approved by~~
19 ~~the council as an appropriate use of moneys for a~~
20 ~~limited period of time as specified by the~~
21 ~~council; provided that for all evidence-informed~~
22 ~~pilot programs and demonstration studies, the~~
23 ~~council shall assess:~~

1 ~~(i) Whether the emerging evidence supports~~
2 ~~distribution of moneys for these uses; or~~

3 ~~(ii) Whether there is a reasonable basis for~~
4 ~~finding such uses with the expectation of~~
5 ~~creating an evidence base for such uses;~~

6 ~~(E) Evaluations of effectiveness and outcomes~~
7 ~~reporting for substance use disorder abatement~~
8 ~~infrastructure, programs, services, supports, and~~
9 ~~resources for which moneys from the fund were~~
10 ~~disbursed, such as the impact on access to harm~~
11 ~~reduction services or treatment for substance use~~
12 ~~disorders, or a reduction in drug-related~~
13 ~~mortality; or~~

14 ~~(F) One or more data interfaces managed by the~~
15 ~~department to aggregate, track, and report, free~~
16 ~~of charge and available online to the public,~~
17 ~~data on substance use disorder, overdoses, and~~
18 ~~drug-related harms; spending recommendations,~~
19 ~~plans, and reports; and outcomes of programs,~~
20 ~~services, supports, and resources for which~~
21 ~~moneys from the fund were disbursed.]~~

22 (c) Moneys in the special fund that are allocated to the
23 counties as their share of proceeds shall be disbursed to the

1 respective counties within [~~thirty~~] ninety days of receipt of
2 the litigation proceeds by the State. The counties' authority to
3 direct and determine how their respective shares are spent shall
4 be consistent with the opioid remediation activities as stated
5 in the MOA [~~litigation agreements~~] and shall not be subject to
6 severability.

7 (d) [~~Unless otherwise required by controlling court order~~
8 ~~to refund to the federal government a portion of the proceeds,~~
9 ~~]~~ Moneys in the fund shall be used for prospective purposes and
10 shall not be used to reimburse expenditures incurred prior to
11 the effective date of this Act.

12 (e) All opioid litigation proceeds shall be spent, whether
13 by the state or counties, consistent with the MOA, settlement
14 agreements entered into by the State, and any court orders
15 issued in relation to the settlement agreements or the MOA.
16

17 **Offered Amendments:** Section 2, § -3 is amended to read:

18 § -3 **Special fund disbursements; requirements;**
19 **restrictions.**

20 (a) Disbursements from the special fund shall be made
21 promptly by the director upon the approval of the council and no
22 later than [~~thirty~~] ninety days after the approval of the HOSAC
23 and the council and execution of all required State procurement

1 requirements. The director shall not make or refuse to make any
2 disbursement allowable under this subsection without the
3 approval of the HOSAC and the council. The director shall
4 adhere to the council's decisions regarding disbursement of
5 moneys from the fund so long as the disbursement is a
6 permissible expenditure under the MOA [~~subsection (b)~~]. The
7 director's role in the distribution of moneys as approved by the
8 council shall be ministerial and not discretionary.

9 (b) [~~Except for moneys disbursed pursuant to~~
10 ~~section — 2(b)(1), m~~] Moneys expended from the fund for the
11 purposes of section — 2(a) [(b)] shall be supplemental to, and
12 shall not supplant or take the place of, any other funds
13 provided to the Department of Health, including, but not limited
14 to, insurance benefits, or federal, state, or county funding, [.
15 ~~that would otherwise have been expended for these purposes.]~~

16 (c) The State and director of finance shall not deduct or
17 transfer to the general fund, or any other special fund or
18 account, any opioid settlement or special fund moneys, including
19 but not limited to a central services assessment, as allowed by
20 Hawaii Revised Statutes §36-27, or under any other statute of
21 rule.

22 [~~(c) The director shall not disburse moneys from the fund~~
23 ~~unless the governor, president of the senate, and speaker of the~~

1 ~~house of representatives transmit to the council a letter~~
2 ~~verifying that moneys appropriated and allocated in that fiscal~~
3 ~~year's budget for substance use disorder abatement~~
4 ~~infrastructure, programs, services, supports, and resources for~~
5 ~~prevention, treatment, recovery, and harm reduction are no less~~
6 ~~than the sums of the moneys for these purposes appropriated and~~
7 ~~allocated in the state budget for the previous fiscal year.~~

8 ~~(d) Subject to subsection (c), all moneys from the special~~
9 ~~fund appropriated for substance use disorder abate~~
10 ~~infrastructure, programs, services, supports, and resources for~~
11 ~~prevention, treatment, recovery, and harm reduction shall be~~
12 ~~made available for disbursement during the fiscal year for which~~
13 ~~they are appropriated by the council; provided that if the~~
14 ~~moneys are not fully expended, they shall be made available in~~
15 ~~each subsequent fiscal year until fully expended.]~~

16

17 **Offered Amendments:** Section 2, § -5 is amended to read:

18 **§ -5 Hawaii opioid litigation proceeds**

19 **council.** (a) There is established a Hawaii opioid litigation
20 proceeds council to be placed in the department of health for
21 administrative purposes only.

22 (b) The purpose of the Hawaii opioid litigation proceeds
23 council shall be to ensure that the proceeds received by the

1 State are spent pursuant to the MOA and section -2(b) [~~are~~
2 ~~allocated and spent on substance use disorder abatement~~
3 ~~infrastructure, programs, services, supports and resources for~~
4 ~~prevention, treatment, recovery, and harm reduction; and to~~
5 ~~ensure robust public involvement, accountability, and~~
6 ~~transparency in allocating and accounting for moneys in the~~
7 ~~fund.~~]

8 (c) The council shall be comprised of fifteen voting
9 members as follows:

10 (1) The director of health, or the director's designee;

11 (2) The director of corrections and rehabilitation, or the
12 director's designee;

13 (3) The superintendent of education, or the
14 superintendent's designee;

15 (4) A member of the senate, designated by the president of
16 the senate;

17 (5) A member of the house of representatives, designated
18 by the speaker of the house of representatives;

19 (6) The dean of the John A. Burns school of medicine at
20 the university of Hawaii at Manoa, or the dean's designee;

21 (7) The mayors of the counties of Hawaii, Kauai, and Maui,
22 and the city and county of Honolulu, or the mayors' designees;

23 and

1 (8) Five community members upon application to, and
2 approval by the governor; provided that these community members
3 shall include:

4 (A) A person who is a member of the Hawaii Substance
5 Abuse Coalition who has experience in providing
6 substance use disorder prevention, treatment,
7 recovery, and harm reduction services;

8 (B) A person who has expertise, experience, or
9 education in public health policy or research;

10 (C) A person who has experience in mental health
11 services;

12 (D) A person who has experience in public budgeting;
13 and

14 (E) A person who has lived experience with substance
15 use disorder recovery.

16 (d) To the extent practicable, council members shall also
17 invite family members of persons who have, or is related to a
18 decendent(s) who had[~~r~~] a substance use disorder, and
19 representatives of communities that have been disproportionately
20 impacted by substance use and disparities in access to care or
21 health outcomes.

22 (e) The council shall elect a chair from among its members
23 on January 15 of each year.

1 (f) Council members shall serve two-year terms.

2 (g) The council shall be responsible for:

3 (1) Recommending and approving policies and procedures for
4 administration of the council and for the application, awarding,
5 and disbursement of moneys from the fund, to be used for
6 purposes set forth in section ~~2(b)(4)~~;

7 ~~[(2) Recommending and approving goals and objectives and
8 their rationales, sustainability plans, and performance
9 indicators relating to:~~

10 ~~(A) Substance use disorder prevention, treatment,
11 recovery, and harm reduction efforts;~~

12 ~~(B) Reducing disparities in access to prevention,
13 treatment, recovery, and harm reduction programs,
14 services, supports, and resources; and~~

15 ~~(C) Improving health outcomes in traditionally
16 underserved populations, including but not
17 limited to those who live in rural communities,
18 persons of color, and formerly incarcerated
19 individuals;~~

20 ~~(3) Approval of awards of moneys from the fund exclusively
21 for permissible expenditures set forth in section ~~2(b)(4)~~;~~

22 and]

1 ~~[(4)]~~ (2) Approving suspensions of allocations of moneys
2 from the fund to recipients found by the council or the
3 department to be substantially out of compliance with council
4 policies or procedures; the policies, procedures, rules, or
5 regulations of the department; or to have used the awards for a
6 purpose other than an approved purpose. The council may resume
7 approval of allocations once the council or department has
8 determined the recipient has adequately remedied the cause of
9 the suspension.

10 (h) When approving an allocation of moneys from the fund,
11 the council shall consider, at a minimum, the following
12 criteria:

13 (1) The number of people per capita with a substance used
14 disorder in a community;

15 (2) Disparities in access to care in a community that may
16 preclude persons with a substance use disorder from obtaining a
17 diagnosis or receiving evidence-based treatment;

18 (3) The number of overdose deaths per capita in a
19 community;

20 (4) The infrastructure, programs, services, supports, or
21 other resources currently available to individuals with
22 substance use disorders in a community; and

1 (5) Disparities in access to care and health outcomes in a
2 community.

3 (i) The council shall hold at least four meetings per
4 year. Members may attend meetings in person, remotely by
5 audiovisual means, or upon approval by the chair, by audio-only
6 means.

7 (j) A majority of council members shall constitute a
8 quorum for the transaction of business, and the affirmative vote
9 of a majority of the members present shall be necessary for any
10 action by the council. Each council member shall have one vote.

11 (k) Members shall disclose to the council, refrain from
12 participating in discussions, and recuse themselves from voting
13 on any matter before the council where the member has a conflict
14 of interest.

15

16 **Offered Amendments:** Section 2, § -7 is amended to read:

17 § -7 **Department of health; program director; duties;**
18 **responsibilities.** The department shall:

19 (1) Employ a full-time program director of the council to
20 plan and support the meetings and functions of the council and
21 direct the day-to-day activities required to ensure that all
22 opioid litigation proceeds received by the State and deposited
23 in the special fund are allocated and spent on opioid

1 remediation and substance use disorder abatement infrastructure,
2 programs, services, supports, and resources for prevention,
3 treatment, recovery, and harm reduction as described in the MOA;
4 and to ensure robust public involvement, accountability, and
5 transparency in allocating and accounting for moneys in the
6 fund;

7 (2) Provide public health research and policy expertise,
8 support staff, facilities, technical assistance, and other
9 resources to assist the program director of the council with the
10 program director's duties;

11 (3) Utilize, where feasible, appropriations from the
12 general fund and existing infrastructure, programs, services,
13 supports, or other resources to address substance use disorders,
14 overdoses, and drug-related harms in the State;

15 (4) Prepare for review and approval by the council goals
16 and objectives and their rationales, sustainability plans, and
17 performance indicators relating to substance use disorder
18 prevention, treatment, recovery, and harm reduction efforts and
19 reducing disparities in access to prevention, treatment,
20 recovery, and harm reduction programs, services, supports, and
21 resources;

1 (5) Evaluate applications and recommend to the council
2 awards and disbursements of moneys from the fund that meet the
3 requirements of section ~~-2(b) [(4)]~~;

4 (6) Maintain oversight over the expenditure of moneys from
5 the fund to ensure fund moneys are expended in accordance with
6 the requirements of the MOA and this Act [~~section —2(b)~~];

7 (7) Recommend to the council any suspensions of
8 allocations of moneys from the fund to recipients found by the
9 department to be out of compliance with council procedures; the
10 department's policies, procedures, rules, or regulations; or to
11 have the awards for a purpose other than an approved purpose;

12 (8) Implement and publish on the council's or department's
13 website the policies and procedures for administration of the
14 council and for the application, awarding, and disbursement of
15 moneys from the fund [~~, to be used for purposes pursuant to~~
16 ~~section —2(b) (4)]~~; and

17 (9) Create and maintain a website that shall include, at a
18 minimum,

19 (A) An annual report of the council's activities and
20 effectiveness pursuant to section -8;

21 (B) Council meeting attendance rolls and minutes,
22 including but not limited to records of all votes
23 on expenditures of moneys from the fund,

1 recipient agreements, and any reports made by a
2 recipient pursuant to section -6; and

3 (C) All policies and procedures approved by the
4 council and any council-related policies,
5 procedures, rule, or regulations adopted by the
6 department.

7

8 **Offered Amendments:** Section 2, § -8 is removed in its entirety:

9 ~~[\$ -8 Court orders; exceptions. (a) The council shall~~
10 ~~disburse moneys from the fund in a manner consistent with the~~
11 ~~limitations on uses of litigation proceeds set forth in any~~
12 ~~controlling court order.~~

13 ~~(b) In the event a controlling court order permits~~
14 ~~expenditures other than or in excess of expenditures authorized~~
15 ~~under section -2(b), the council shall adhere to the~~
16 ~~limitations on use of moneys set forth in section -2(b).~~

17 ~~(c) In the event section -2(b) permits expenditures~~
18 ~~other than or in excess of those authorized in a controlling~~
19 ~~court order, the council shall adhere to the limitations on use~~
20 ~~of moneys set forth in the court order.~~

21 ~~(d) In the event a controlling court order allocates~~
22 ~~litigation proceeds among counties, section -2(b)(1) shall~~

1 ~~not apply, and the council shall disburse moneys from the fund~~
2 ~~according to the allocations set forth in the court order.]~~

3

4 **Offered Amendments:** Section 2, § -9 is amended to read:

5 **§ -9 Reporting.** (a) Beginning on December 31 one year
6 after the initial deposit of proceeds into the fund, and every
7 year thereafter, the department shall provide a written report
8 to the governor, legislature, and attorney general detailing the
9 council's activities during the previous calendar year.

10 (b) The report shall be published on the council's or
11 department's website and shall include, at a minimum:

12 (1) The opening and closing balance of the fund for the
13 calendar year;

14 (2) An accounting of all credits to and expenditures from
15 the fund;

16 (3) The name and a description of each recipient of moneys
17 from the fund, and the amount awarded to each recipient;

18 (4) A description of each award's intended use, including
19 the specific program, service, or resource funded; population
20 served; and measures that the recipient will use to assess the
21 impact of the award;

22 (5) The primary criteria used to determine each recipient
23 and its respective award amount;

1 (6) A summary of the information included in the annual
2 report prepared by the recipient required under section -6;

3 (7) All applications for an award of moneys from the fund
4 received during the calendar year;

5 (8) A description of any finding or concern as to whether
6 all moneys disbursed from the fund pursuant to
7 section -2[~~(b)~~](a)(4) supplemented, and did not supplant or
8 replace, any existing or future federal, state, or county
9 funding; and

10 (9) The performance indicators and progress toward
11 achieving the goals and objectives developed under this Act,
12 including metrics on improving outcomes and reducing mortality
13 and other harms related to substance use disorders."
14

15 **Offered Amendments:** Page 22, lines 8-13 are amended to read:

16 (2) [~~One~~] Two full-time equivalent ([±] 2.0 FTE) outreach
17 coordinator positions exempt from chapter 76, Hawaii Revised
18 Statutes; and

19 (3) One Two full-time equivalent ([±] 2.0 FTE)
20 administrative assistant positions exempt from chapter 76,
21 Hawaii Revised Statutes.
22

- 1 Thank you for the opportunity to testify on this measure.



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
Ka 'Oihana Mālama Mo'ohelu a Kālā
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
ON
HOUSE BILL NO. 2806, H.D. 1

February 14, 2024
2:00 p.m.
Room 325 and Videoconference

RELATING TO OPIOID LITIGATION PROCEEDS

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill (H.B.) No. 2806, H.D. 1, adds a new chapter to the HRS, entitled "Hawai'i Opioid Litigation Proceeds" to:

- Establish the Hawai'i Opioid Litigation Proceeds (HOLP) Special Fund (HOLPSF) to be administered by the HOLP Council (HOLPC).
- Establish the HOLPC administratively within the Department of Health (DOH).
- Require DOH to employ a full-time program director for the HOLPC and to provide resources and assist the program director.
- Require DOH to submit an annual report on the HOLPC's activities, including credits and expenditures of the HOLPSF.
- Appropriates an unspecified amount of special funds from the HOLPSF for FY 25 for drug policy and coordination and the establishment of 3.00 full-time equivalent positions.

As a matter of general policy, B&F does not support the creation of any special fund which does not meet the requirements of Section 37-52.3, HRS. Special funds should:

- 1) serve a need as demonstrated by the purpose, scope of work, and an explanation why the program cannot be implemented successfully under the general fund appropriation process;
- 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue;
- 3) provide an appropriate means of financing for the program or activity; and
- 4) demonstrate the capacity to be financially self-sustaining. Regarding H.B. No. 2806, H.D. 1, it is difficult to determine whether the proposed special fund would be self-sustaining.

Additionally, it is unknown how much funds will be available in the HOLPSF for investments after disbursements to the counties, spending for substance use disorder abatement purposes, and administrative costs. Because of the short time frame, it is recommended that funds be kept in the treasury to earn interest and to avoid the additional costs and fees associated with the investment of funds through an investment manager.

Thank you for your consideration of our comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Hawai'i Opioid Litigation Proceeds Special Fund; Hawai'i Opioid Litigation Proceeds Council; Establishment

BILL NUMBER: HB 2806 HD 1

INTRODUCED BY: House Committee on Health & Homelessness

EXECUTIVE SUMMARY: Establishes the Hawai'i opioid litigation proceeds special fund. Establishes the Hawai'i opioid litigation proceeds council to administer the special fund. Establishes standards for expenditure of opioid litigation proceeds received by the State. Establishes and appropriates funds for three full-time equivalent positions.

SYNOPSIS: Amends the HRS by adding a new chapter to establish a special fund and a council to take charge of collection and disbursement of opioid litigation proceeds.

EFFECTIVE DATE: July 1, 3000.

STAFF COMMENTS: The 1989 Tax Review Commission noted that use of special fund financing is a "departure from Hawaii's sound fiscal policies and should be avoided." It also noted that special funds are appropriate where the revenues to the funds maintain some direct connection between a public service and the beneficiary of that service. The Commission found that special funds which merely set aside general funds cannot be justified as such actions restrict budget flexibility, create inefficiencies, and lessen accountability. It recommended that such programs can be given priority under the normal budget process without having to resort to this type of financing.

This bill means to structure new government around the opioid litigation proceeds that the State is expecting, which the preamble to this bill pegs at \$156 million.

We question why this new government is needed. The \$156 million, or installments of it, can go into the general fund; at that point the Legislature can exercise its constitutional responsibilities and determine which of the State's priorities are worthy of funding. The bill proposes, in essence, abdication of that responsibility to a nameless, unelected council.

Digested: 2/12/2024



To: Judiciary and Hawaiian Affairs

Hearing Date/Time: Wednesday Feb. 14th 2:00 PM

Re: Testimony in Strong Support of HB 2806 HD1

From: Heather Lusk, Hawaii Health and Harm Reduction Center

Dear Chair Tarnas, Vice Chair Takayama and members of the committee:

The Hawaii Health & Harm Reduction Center (HHRC) **supports HB 2806 HD 1** which would support dissemination of the opioid litigation funds and establish a council to administer the special fund. These funds may be used for a variety of substance use related activities and are desperately needed to save lives, increase treatment capacity and promote recovery.

HHRC's mission is to *reduce harm, promote health, create wellness and fight stigma in Hawaii and the Pacific*. We focus our efforts on those disproportionately affected by social determinants of health, including but not limited to: people living with and/or affected by HIV, hepatitis, substance use, and the transgender, LGBTQ and the Native Hawaiian communities.

HHRC was a founding member of the Hawaii Opioid Initiative (HOI) and has been involved in distributing naloxone, an opioid antagonist, statewide to prevent death from opioid-related overdose. HHRC is also one of the largest treatment providers for Opioid Use Disorder and daily experiences the struggle of accessing detox services and other treatment services for those struggling with OUD and other substance use disorders.

We strongly recommend that a member of the Hawaii Substance Abuse Council (HSAC) be appointed to the Council described in HB 2806 and also recommend someone with lived experience of OUD in order to ensure the funds are spent aligned with best practices.

Thank you for the opportunity to testify.

Heather Lusk, Executive Director, Hawaii Health and Harm Reduction Center

Here is a test. Here's an apostrophe. ' still looking okay comparatively



HB2806 HD 1 Opioid Settlement Bill to Support SUD Treatment

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

Wednesday, Feb 14, 2024: 2:00: Room 325 Videoconference

Hawaii Substance Abuse Coalition Supports and Recommends for HB2806 HD1:

ALOHA CHAIR, VICE CHAIR, AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization for substance use disorder and co-occurring mental health disorder treatment and prevention agencies and recovery-oriented services.

HSAC supports the amendment that funds would support positions within DOH:ADAD.

HSAC recommends that pertaining to the council member selection that an HSAC member is chosen as one of the 5 community members because HSAC agencies have expertise in substance abuse prevention and treatment, recovery, and harm reduction.

This is great news that \$19 million has been received and over \$156 million is expected in total.

We highlight and stress that firm commitment and transparent planning is need so that opioid litigation proceeds be directed towards prevention as well as to address substance use disorders, overdoses, and other drug-related harms, which is what the intended purpose is for the settlement.

- This can be achieved by establishing an opioid litigation proceeds special fund to be administered by a transparent council.
- The council is subject to the DOH to ensure proceeds are allocated and spent on Funds for substance use disorder abatement, infrastructure, programs, services, supports, and resources for prevention, treatment, recovery, and harm reduction that are no less than the sums of the moneys for these purposes appropriated.
- Limits on funds used for other purposes.

HSAC supports that an Opioid Settlement that is a response to our community becoming addicted to or suffering from opioids include: substance abuse and co-occurring disorder related services such as:

- 1. Residential and outpatient, which is formal treatment for both adults and adolescents.**
- 2. Prevention programs for our youth.**
- 3. Stabilization services such as crisis intervention beds, case management**
- 4. Recovery oriented services such as outreach and harm reduction are very important.**
- 5. Medication therapies such as suboxone, methadone, naloxone:**
- 6. Primary Care Services – develop motivational interviewing for PCPs to provide guidance or referral.**
- 7. Housing with Supportive Services**
- 8. Vocational counseling services**
- 9. Mental Health agencies and Child and Adolescent Services**
- 10. Funding for DOH state agencies especially ADAD**

After some funds are distributed to state and county agencies, HSAC supports that the bulk of funds are distributed according to:

- Identifying structural gaps in substance use disorder services,
- Infrastructure for evidenced-based prevention and treatment, recovery, or harm reduction services,
- Services for evidenced-based prevention and treatment, recovery, or harm reduction services,
- Evidenced-informed services for prevention and treatment, recovery, or harm reduction services provided that the emerging evidence supports such distributions of funds for these uses that has reasonable expectations of becoming evidenced-based in the near future,
- Evaluation processes of outcomes for fund uses.

HSAC finds that the uses noted above are necessary to serve the public interest and that such services are greatly underfunded across the nation, including Hawaii, and that such services will greatly improve the quality of life for Hawai'i.

We appreciate the opportunity to provide testimony and are available for questions.

HB-2806-HD-1

Submitted on: 2/13/2024 11:40:32 AM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Aaron Ruddick	Individual	Support	Written Testimony Only

Comments:

Chair Tarnas, Vice Chair Takayama, and committee members

I SUPPORT HB 2806 which would support dissemination of the opioid litigation funds and establish a council to administer the special fund. These funds may be used for a variety of substance use related activities and are desperately needed to save lives, increase treatment capacity and promote recovery.

HB-2806-HD-1

Submitted on: 2/13/2024 11:51:26 AM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Thaddeus Pham	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Tarnas, Vice Chair Takayama, and JHA Committee members,

As a public health profession and concerned citizen, I write in **support of HB 2806 HD1 with a requested amendment**, which would enhance disbursement of the opioid litigation funds and establish a council to administer the special fund.

As made evident in the The 2022 Revised State Plan on Substance Abuse (Revised May 2023) from the Dept. of Health (<https://health.hawaii.gov/substance-abuse/state-plan/>), the infrastructure for substance use prevention, treatment, and care is woefully lacking, especially for underserved communities (eg, Native Hawaiians; sexual and gender minorities). These funds provide a rare opportunity to make meaningful impact on public health in Hawai'i. In addition, there are existing models of success from other states that also seek to engage community partners and invest in local projects.

To ensure funds meet the needs of local communities, I request the addition of "Person with lived experience in substance use" to be a formal seat on the proposed Council.

Ensuring rapid but thoughtful deployment of these funds for the entire continuum of care (from prevention to treatment to harm reduction) can help to improve lives of local residents.

Mahalo for your consideration,

Thaddeus Pham (he/him)

HB-2806-HD-1

Submitted on: 2/13/2024 12:35:23 PM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Beatrice Zovich	Individual	Support	Written Testimony Only

Comments:

Dear Chair Tarnas, Vice Chair Takayama and members of the committee

I **support HB 2806** which would support dissemination of the opioid litigation funds and establish a council to administer the special fund. These funds may be used for a variety of substance use related activities and are desperately needed to save lives, increase treatment capacity and promote recovery.

HB-2806-HD-1

Submitted on: 2/13/2024 1:04:56 PM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jason Yaris	Individual	Support	Written Testimony Only

Comments:

Dear Chair Tarnas, Vice Chair Takayama and members of the committee

I **support HB 2806** which would support dissemination of the opioid litigation funds and establish a council to administer the special fund. These funds may be used for a variety of substance use related activities and are desperately needed to save lives, increase treatment capacity and promote recovery.

HB-2806-HD-1

Submitted on: 2/13/2024 1:25:14 PM

Testimony for JHA on 2/14/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Christine Kapiioho	Individual	Support	Written Testimony Only

Comments:

Dear Chair Tarnas, Vice Chair Takayama and members of the committee

I **support HB 2806** which would support dissemination of the opioid litigation funds and establish a council to administer the special fund. These funds may be used for a variety of substance use related activities and are desperately needed to save lives, increase treatment capacity and promote recovery.

Christine Kapiioho