

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau
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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:

S.B. No.1280, Relating to Funding for the Department of the Attorney General Tobacco Enforcement Unit

BEFORE THE:

Senate Committee on Health and Human Services

DATE: Wednesday, February 15, 2023

TIME: 1:00 p.m.

LOCATION: State Capitol, Room 225

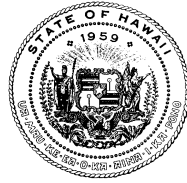
Chair San Buenaventura, Vice-Chair Aquino, and Members of the Committee:

The Department of Taxation ("Department") supports S.B.1280, an Administration measure, and offers the following comments for your consideration.

S.B. 1280 seeks to amend section 28-15(c) Hawaii Revised Statutes (HRS), to stabilize and increase funding for the Tobacco Enforcement Unit within the Department of the Attorney General by increasing the amount of funds that the Tobacco Enforcement Special Fund can carry over at the end of the fiscal year from \$500,000 to \$750,000. Increased funding for the Tobacco Enforcement Unit is accomplished through amending section 245-26(a), HRS, to increase the cigarette tax stamp fee from 1.7 per cent to 2.2 per cent of the denominated value of each stamp sold.

The Department is able to implement the measure by its current effective date of July 1, 2023 and notes that it will need to work with the appropriate vendors and financial institutions to ensure that the fee increase for the stamp is properly implemented.

Thank you for the opportunity to provide comments on this measure.



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

**Testimony in SUPPORT of S.B. 1280
RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY
GENERAL TOBACCO ENFORCEMENT UNIT**

SENATOR JOY A. SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Hearing Date: February 15, 2023

Room Number: Conference Room 225
and Videoconference

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

4 **Department Testimony:** The DOH supports Senate Bill 1280 (S.B. 1280) as a public health
5 measure to ensure sustainability of the State's tobacco enforcement activities and compliance
6 requirements. S.B. 1280 proposes to increase the amount of funds that the tobacco enforcement
7 special fund can carry over, increases cigarette tax stamp fees, increases the percent allocated to
8 the tobacco enforcement special fund, and increases the sum of money received from the tobacco
9 settlement special fund (TSSF).

10 The nexus between the DOH and the AG Tobacco Enforcement Unit (TEU) began when
11 the State of Hawaii joined in the multi-state suit against the tobacco manufacturers. The public
12 health and economic cost of smoking was increasing with almost one in five adults and nearly
13 one in three youth smoking by 1997.¹ Hawaii with forty-five other states agreed on the Master
14 Settlement Agreement (MSA) with the tobacco manufacturers with the intent of furthering,
15 "policies designed to reduce youth smoking, to promote the public health and to secure monetary

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

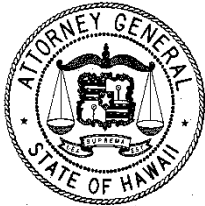
1 payments to the Settling States.”² The AG Tobacco Enforcement special fund portion, used for
2 the diligent enforcement of the MSA is described in §328L-2(a), and the remaining portion of the
3 TSSF is distributed by the DOH pursuant to §328L-2(b), Hawaii Revised Statutes (HRS).

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

12 Thank you for the opportunity to testify.

13 **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>)



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1280, RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY GENERAL TOBACCO ENFORCEMENT UNIT.

BEFORE THE:

SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

DATE: Wednesday, February 15, 2023 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 225

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

Chair San Buenaventura 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 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 2021-2022 was over \$38.4 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, Missouri, and New Mexico 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 collection (see section 245-26(a)(2), HRS).

The cigarette tax stamp revenues reported by the Department of Taxation have plummeted, from over \$116 million in fiscal year 2015-2016 to just over \$85 million in fiscal year 2021-2022. The cigarette tax stamp fee revenues deposited into the tobacco enforcement special fund have similarly dropped – from \$1.74 million in fiscal year 2015-2016 to \$1.27 million in fiscal year 2021-2022. This downward trend is expected to continue and, if so, 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 was created to demonstrate 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



Cigarette Tax Stamp
 \$ 0.16/cigarette or little cigar
 \$3.20/pack of 20
\$85,131,574 (FY22)

2 cents	Hawaii Cancer Research Special Fund	\$10,583,348 (FY 22)
1.125 cents	Trauma System Special Fund	\$5,953,133 (FY 22)
1.250 cents	Community Health Centers Special Fund	\$6,614,592 (FY 22)
1.250 cents	Emergency Medical Services Special Fund	\$6,614,592 (FY 22)
§245-15, HRS		

"Stamp Fee"
 § 245-26, HRS

1.5%	0.2%	Total: 1.7%
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**Tobacco Enforcement
 Special Fund (AG)**
\$1,270,002 (FY 22)
 12.6% decrease from FY 21

**Cigarette Tax Stamp
 Administrative
 Special Fund (DOTAX)**
\$169,334 (FY 22)

remainder → **General Fund**
 ~\$65,658,000 (FY22)

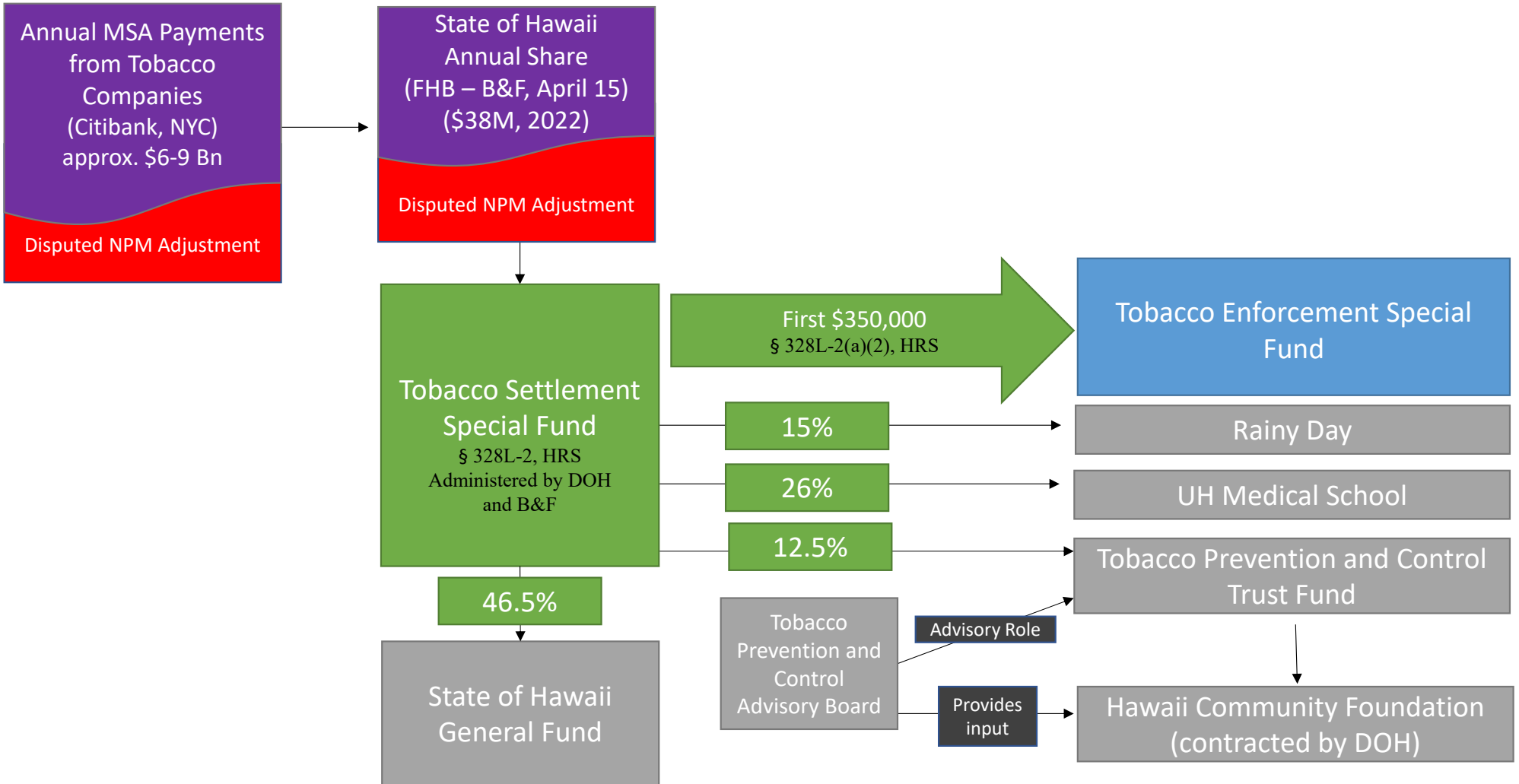
All other tobacco products
 70% of wholesale
 §245-3, HRS

Large Cigars
 50% of wholesale
 §245-3, HRS

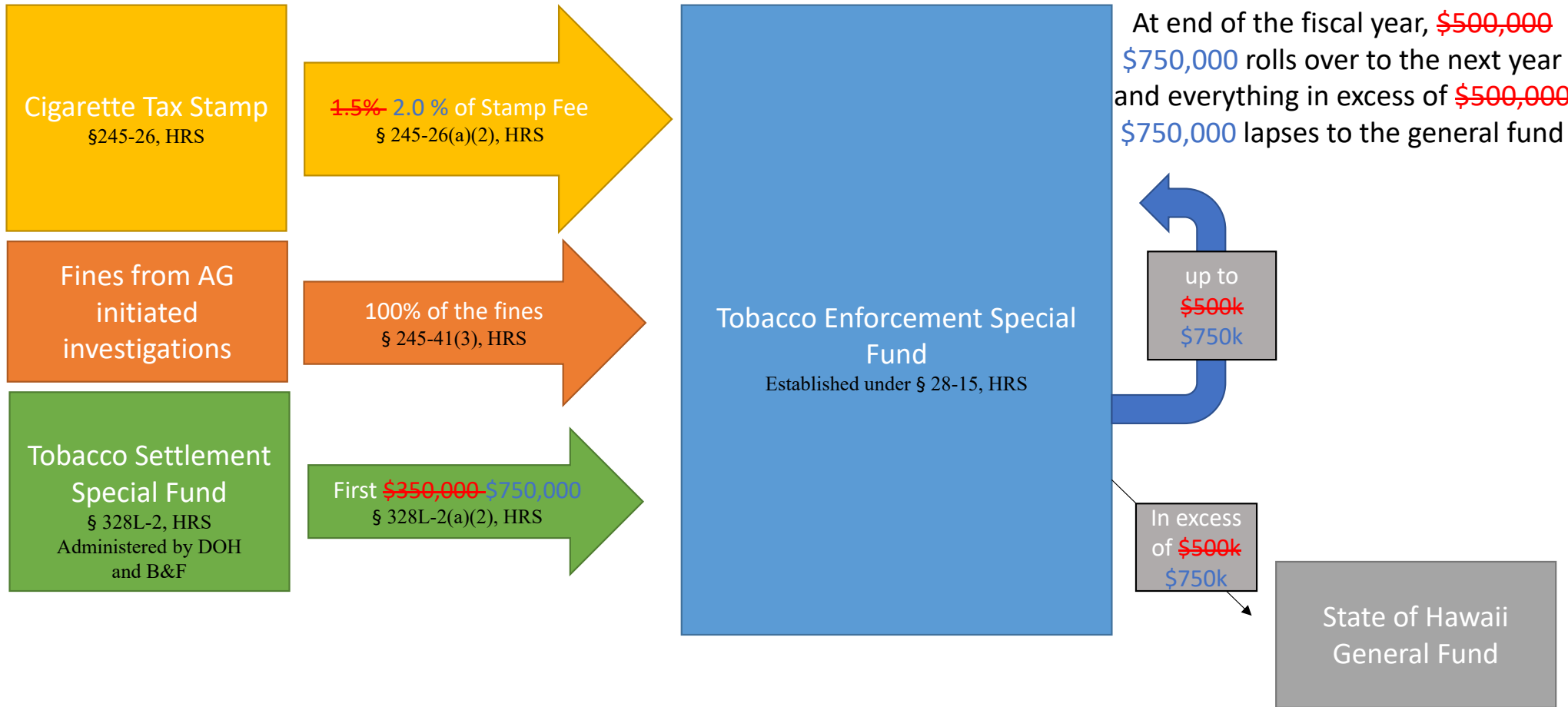
\$2.50/tobacco license fee
 §245-3, HRS

\$20.00/retail permit
 §245-3, HRS

TOBACCO MASTER SETTLEMENT AGREEMENT



SUMMARY OF HB982/SB1280





HIPHI Board

Misty Pacheco, DrPH
Chair
University of Hawai'i at Hilo

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John A. Burns School of Medicine,
Native Hawaiian Research Office

Debbie Erskine
Treasurer
ARCH-MEPS Consulting LLC, Owner

Keshia Adolpho, LCSW
Na'au Healing Center

Camonia Graham - Tutt, PhD
University of Hawai'i - West O'ahu

Carissa Holley, MEd
Hale Makua Health Services

Dina Shek, JD
Medical-Legal Partnership
For Children in Hawai'i

Garret Sugai
HMSA

Kathleen Roche, MS, RN, CENP
Kaiser Permanente

May Okihiro, MD, MS
John A. Burns School of Medicine,
Department of Pediatrics

Titiimaea Ta'ase, JD
State of Hawai'i, Deputy Public
Defender

HIPHI Initiatives

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 11, 2023

To: Senator Joy A. San Buenaventura, Chair
Senator Henry J. C. Aquino, Vice Chair
Members of the Committee on Health and Human Services

Re: Support SB1280 Relating to Funding For the Department of the
Attorney General Tobacco Enforcement Unit

Hrg: Wednesday, February 15, 2023, at 1:00 PM, Conf Rm 225

The Coalition for a Tobacco-Free Hawai'i, a program of the Hawai'i Public Health Instituteⁱ is in **Support of SB 1280**, 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 by concurrently increasing 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.

In short, 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, and it is because of the comprehensive approach that has been taken to regulate cigarettes through taxes, regulation, licensing and permitting, and enforcement. By increasing access to funding, we can ensure that the Enforcement Unit will continue to do its job, supporting that comprehensive approach.

Thank you for considering SB 1280 and other policies that will 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.



**Testimony to the Senate Committee on Health and Human Services
Wednesday, February 15, 2023; 1:00 p.m.
State Capitol, Conference Room 225
Via Videoconference**

RE: SENATE BILL NO. 1280, RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY GENERAL TOBACCO ENFORCEMENT UNIT.

Chair San Buenaventura, Vice Chair Aquino, and Members of the Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **SUPPORTS** Senate Bill No. 1280, RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY GENERAL TOBACCO ENFORCEMENT UNIT.

By way of background, the HPCA represents Hawaii's Federally Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines to over 150,000 patients each year who live in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

This bill, as received by your Committee, would stabilize and increase funding for the Tobacco Enforcement Unit within the Department of the Attorney General by:

- (1) Increasing the amount of funds that the Tobacco Enforcement Special Fund (Special Fund) can carry over at the end of the fiscal year;
- (2) Increasing the Cigarette Tax Stamp Fee (Fee) and the percentage of the Fee allocated to the Special Fund; and
- (3) Increasing the sum of moneys received from the Tobacco Settlement.

This bill is part of the Administration's legislative package and it was proposed by the Department of the Attorney General (ATG-04(23)).

Testimony on Senate Bill No. 1280
Wednesday, February 15, 2023; 1:00 p.m.
Page 2

FQHCs have long seen first-hand how tobacco has literally destroyed the lives of our patients and their families. Because of the ubiquity of cigarettes, chewing tobacco, and now electronic smoking devices, the impacts of tobacco harms our citizenry on a generational basis with people experimenting at even earlier ages. Accordingly, the HPCA supports efforts that would improve enforcement of existing laws and create disincentives for consumers to use these products.

The HPCA urges your favorable consideration of this measure.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.



fightcancer.org

American Cancer Society
Cancer Action Network
2370 Nuʻuanu Avenue
Honolulu, Hi 96817
808.460.6109
www.fightcancer.org

Senate Committee on Health and Human Services
Senator Joy San Buenaventura, Chair
Senator Henry Aquino, Vice Chair

Hearing Date: Wednesday, February 15, 2023

**ACS CAN SUPPORTS SB 1280 – RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY
GENERAL TOBACCO ENFORCEMENT UNIT.**

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

Thank you for the opportunity to SUPPORT SB 1280: RELATING TO FUNDING FOR THE DEPARTMENT OF THE ATTORNEY GENERAL 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>

SB-1280

Submitted on: 2/13/2023 11:08:49 AM

Testimony for HHS on 2/15/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Michael Zehner	Testifying for Hawaii Smokers Alliance	Oppose	Written Testimony Only

Comments:

There is too much divisive over-regulation as it is. This bill is another shameful over-regulation that harms local businesses, promotes waste, and cost jobs.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TOBACCO, Increase User Fees, Alter Earmarks

BILL NUMBER: HB 982, SB 1280 [ATG-04]

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

EXECUTIVE SUMMARY: Increases and stabilizes the amount of funding for the tobacco enforcement special fund within the Department of the Attorney General by: (1) increasing the amount of funds that the tobacco enforcement special fund can carry over at the end of the fiscal year; (2) increasing the cigarette tax stamp fee and by concurrently increasing the percentage of the cigarette tax stamp fee deposited to the tobacco enforcement special fund; and (3) amending the amount of funds to be deposited in the tobacco enforcement special fund from the Hawai'i tobacco settlement special fund..

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, 2023.

STAFF COMMENTS: This is an Administration bill sponsored by the Department of Attorney General and designated ATG-04 (23).

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).

Digested: 2/6/2023

SB-1280

Submitted on: 2/10/2023 5:13:20 PM

Testimony for HHS on 2/15/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nicholas Winters	Individual	Oppose	Written Testimony Only

Comments:

Opposed.

SB-1280

Submitted on: 2/11/2023 11:48:46 AM

Testimony for HHS on 2/15/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jessica Chang	Individual	Oppose	Written Testimony Only

Comments:

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SB-1280

Submitted on: 2/12/2023 10:07:31 AM

Testimony for HHS on 2/15/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dallas Nelson	Individual	Oppose	Written Testimony Only

Comments:

Another mean and bigoted bill that belongs in the trash can.

SB-1280

Submitted on: 2/13/2023 4:13:26 PM

Testimony for HHS on 2/15/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kathy Kim	Individual	Oppose	Written Testimony Only

Comments:

Defund the enforcement unit now!