

JAN 23 2025

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**A BILL FOR AN ACT**

RELATING TO HEALTH.

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

1           SECTION 1. The legislature finds that tobacco use remains  
2 the leading cause of preventable disease and death in the United  
3 States and in Hawaii. Tobacco use is a serious public health  
4 problem in terms of the human suffering and loss of life it  
5 causes, as well as the financial burden it imposes on society  
6 and our healthcare system. According to calculations based on  
7 the Centers for Disease Control and Prevention's 2014 "Best  
8 Practices for Comprehensive Tobacco Control Programs" guide,  
9 \$611,000,000 in health care costs are directly attributed to  
10 smoking in Hawaii.

11           Furthermore, in a 2016 report titled "E-Cigarette Use Among  
12 Youth and Young Adults" (2016 E-Cigarette Use report), the  
13 United States Surgeon General explained that ninety-five per  
14 cent of all smokers start smoking before the age of twenty-one.  
15 A 2017 study published in the American Journal of Preventive  
16 Medicine found that eighty-one per cent of youth who ever used a  
17 tobacco product report that the first product they used was  
18 flavored. Flavored tobacco products promote youth initiation to

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1 tobacco use and push young occasional smokers to become daily  
2 smokers by reducing or masking the natural harshness and taste  
3 of tobacco smoke, thereby increasing the appeal of tobacco  
4 products.

5       Menthol is used by the tobacco industry because it has a  
6 cooling and numbing effect and can reduce the throat irritation  
7 caused by smoking, thus making menthol cigarettes an appealing  
8 option for youth who are initiating tobacco use. According to  
9 the 2022 National Youth Tobacco Survey, forty per cent of youth  
10 who used a flavored tobacco product reported using a menthol-  
11 flavored tobacco product. Candy and fruit flavors improve the  
12 taste and reduce the harshness of tobacco products, making them  
13 more appealing and easier for beginners to try tobacco products  
14 and ultimately become addicted to nicotine. The popularity of  
15 electronic cigarettes among youth is concerning. The  
16 combination of enticing flavors and nicotine salts allows higher  
17 levels of nicotine to be inhaled with less irritation. In the  
18 2016 E-Cigarette Use report, the United States Surgeon General  
19 stated that, "compared with older adults, the brain of the youth  
20 and young adults is more vulnerable to the negative consequences  
21 of nicotine exposure. The effects include addiction, priming

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1 for use of other addictive substances, reduced impulse control,  
2 deficits in attention and cognition, and mood disorders."

3 While there has been a significant decline in the use of  
4 combustible cigarettes over the last decade, there has been a  
5 dramatic increase in the use of electronic smoking devices by  
6 Hawaii's youth. Vaping in Hawaii is at an epidemic level.  
7 According to the 2011 and 2015 Hawaii Youth Tobacco Survey,  
8 during these four years, the proportion of youth experimenting  
9 with electronic smoking devices increased six-fold among middle  
10 school youth and four-fold among high school youth. According  
11 to the 2021 Hawaii Youth Risk Behavior Survey, thirteen per cent  
12 of middle school and thirty-two per cent of public high school  
13 students had tried electronic smoking devices. The 2021 Hawaii  
14 Youth Risk Behavior Survey also indicates that seven per cent of  
15 middle school and fifteen per cent of high school students  
16 currently vape. The 2021 Hawaii Youth Risk Behavior Survey also  
17 shows the prevalence is higher in the neighbor island counties  
18 with high school vaping at twenty-two per cent for the county of  
19 Hawaii, eighteen per cent in the county of Maui, and sixteen per  
20 cent in the county of Kauai. The elevated use of electronic  
21 smoking devices has led to a significant rise in youth nicotine  
22 addiction.

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1           Furthermore, while the 2009 Family Smoking Prevention and  
2 Tobacco Control Act, P.L. 111-31 (Tobacco Control Act),  
3 prohibited characterizing flavors, including fruit and candy  
4 flavorings, in cigarettes, it did not ban menthol in cigarettes  
5 or the use of characterizing flavors in other tobacco products.  
6 The Tobacco Control Act provided the United States Food and Drug  
7 Administration with the authority to regulate cigarettes, roll-  
8 your-own tobacco, and smokeless tobacco, but required the Food  
9 and Drug Administration to undertake an extensive rulemaking  
10 process to extend its regulatory authority to include electronic  
11 smoking devices. Delays in the regulatory process allowed the  
12 tobacco industry and electronic smoking device industry to  
13 significantly increase the introduction of and extensively  
14 market flavored non-cigarette tobacco products, especially in  
15 electronic smoking devices. It is no coincidence that the  
16 number of electronic cigarette flavors have skyrocketed in  
17 recent years. In a 2018 study published in The Journal of  
18 Medical Internet Research, the count of flavor labels was  
19 reported to have more than doubled from 7,776 in 2013-2014 to  
20 15,586 in 2016-2017. Hawaii has experienced the heightened  
21 promotion of vape products that offer candy and local flavors  
22 designed to appeal to Hawaii's youth, such as orange soda, apple

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1 mui, Kona coffee, Maui mango, shaka strawberry, lychee ice, and  
2 Molokai hot bread. Additionally, many of the packages are  
3 designed to look like candies popular with children, such as  
4 Jolly Ranchers and Sour Patch Kids.

5 Current surveillance data show that menthol cigarette  
6 smoking is high among the general population in Hawaii with  
7 further gender and racial disparities. According to the 2022  
8 Behavioral Risk Factor Surveillance System, sixty-four per cent  
9 of adult smokers in Hawaii usually smoke menthol cigarettes.  
10 The 2022 Behavioral Risk Factor Surveillance System also shows  
11 that prevalence is high among specific ethnic groups with  
12 seventy-one per cent of Filipinos, eighty-one per cent of Native  
13 Hawaiians, and sixty-seven per cent of Japanese usually smoking  
14 menthol cigarettes. The 2022 Behavioral Risk Factor  
15 Surveillance System also shows that female smokers in Hawaii  
16 smoke menthol cigarettes at higher rates than men, seventy-two  
17 per cent versus fifty-eight per cent, comparatively.

18 In response to California banning flavored e-cigarettes and  
19 menthol cigarettes in 2022, the tobacco industry developed a new  
20 way to replace the menthol flavor and market these new products  
21 as "non-menthol" products. These products contain a new  
22 synthetic agent, which purports to create a cooling sensation

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1 similar to menthol without using menthol and menthol's  
2 characteristically minty odor. These products can facilitate  
3 smoking initiation, similar to menthol, as they are marketed to  
4 impart cooling sensations in users. Following the California  
5 flavored tobacco legislation, the tobacco industry also  
6 developed tobacco product flavor enhancers, or products designed  
7 and sold to create a flavor when added to a tobacco product.  
8 These products would provide the option to add flavors into a  
9 tobacco product and could continue to be marketed to users and  
10 appeal to youth.

11       Given the significant threat to public health posed by  
12 flavored tobacco products, including those with menthol and  
13 those that produce cooling sensations, five states, including  
14 Massachusetts, New Jersey, New York, Rhode Island, and  
15 California, and three hundred ninety-five localities have  
16 enacted laws prohibiting the sale of flavored tobacco products,  
17 according to the 2024 Campaign for Tobacco-Free Kids States and  
18 Localities Report. These laws now protect over twenty-five per  
19 cent of the United States population. The legislature finds  
20 that Hawaii should also take steps to regulate these products to  
21 reduce tobacco-related health disparities and address the youth  
22 vaping epidemic.

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1           Accordingly, the purpose of this Act is to prohibit the  
2 sale or distribution in Hawaii of all flavored tobacco products,  
3 including products with menthol and products that produce  
4 cooling sensations, and prohibit the mislabeling of products as  
5 nicotine-free.

6           SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
7 amended by adding a new part to be appropriately designated and  
8 to read as follows:

9                   "PART     .    **SALE OF FLAVORED TOBACCO PRODUCTS**

10           §321-A Definitions. As used in this part, unless the  
11 context otherwise requires:

12           "Cigarette" has the same meaning as in section 245-1.

13           "Constituent" means any ingredient, substance, chemical, or  
14 compound, other than tobacco, water, or reconstituted tobacco  
15 sheet, that is added by the manufacturer to a tobacco product  
16 during the processing, manufacture, or packing of the tobacco  
17 product.

18           "Department" means the department of health.

19           "Director" means the director of health.

20           "Distinguishable" means perceivable to the sense of smell,  
21 taste, or touch, or more than one or all of these.

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1 "Electronic smoking device" means any device that may be  
2 used to deliver any aerosolized or vaporized substance to a  
3 person inhaling from the device, including but not limited to,  
4 an electronic cigarette, electronic cigar, electronic pipe, vape  
5 pen, or electronic hookah. "Electronic smoking device" does not  
6 include drugs, devices, or combination products authorized for  
7 sale by the United States Food and Drug Administration, and  
8 subject to the Federal Food, Drug and Cosmetic Act (21 U.S.C.  
9 §301 et seq.).

10 "E-liquid product" means any liquid or like substance,  
11 which may contain nicotine, that is designed or intended to be  
12 used in an electronic smoking device, whether packaged in a  
13 cartridge or other container.

14 "E-liquid product" does not include:

- 15 (1) Prescription drugs;
- 16 (2) Cannabis for medical use pursuant to chapter 329 or  
17 manufactured cannabis products pursuant to chapter  
18 329D; or
- 19 (3) Medical devices used to aerosolize, inhale, or ingest  
20 prescription drugs, including manufactured cannabis  
21 products described in section 329D-10.

22 "Entity" has the same meaning as in section 245-1.

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1 "Flavored tobacco product" means any tobacco product that  
2 imparts:

3 (1) A taste or odor distinguishable by an average  
4 consumer, other than the taste or odor of tobacco,  
5 before, during, or after the consumption of the  
6 tobacco product, or more than one or all of these,  
7 including but not limited to, any tastes or odors  
8 relating to fruit, chocolate, vanilla, honey, candy,  
9 cocoa, dessert, alcoholic beverage, mint, wintergreen,  
10 menthol, herb, or spice; or

11 (2) A cooling or numbing sensation distinguishable by an  
12 average consumer before, during, or after the  
13 consumption of the tobacco product, or more than one  
14 or all of these.

15 "Inspector" means a person appointed, commissioned, or  
16 contracted by the department for the enforcement of this part  
17 pursuant to section 321-C.

18 "Labeling" means written, printed, pictorial, or graphic  
19 matter upon a tobacco product or any of its packaging.

20 "Nicotine" means any form of the chemical nicotine,  
21 including any salt or complex, regardless of whether the

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1 chemical is naturally or synthetically derived, and includes  
2 nicotinic alkaloids and nicotine analogs.

3 "Packaging" means a pack, box, carton, or container of any  
4 kind, or if no other container, any wrapping, including  
5 cellophane, in which a tobacco product is sold or offered for  
6 sale to a consumer.

7 "Retailer" means an entity that sells, offers for sale, or  
8 exchanges or offers to exchange tobacco products to consumers  
9 for any form of consideration. The term "retailer" includes an  
10 owner, agent, or employee of a tobacco retail location.

11 "Tobacco product" means:

- 12 (1) Any product containing, made of, or derived from  
13 tobacco or nicotine that is intended for human  
14 consumption or is likely to be consumed, whether  
15 inhaled, absorbed, or ingested by any other means,  
16 including but not limited to a cigarette, a cigar,  
17 pipe tobacco, chewing tobacco, snuff, or snus;
- 18 (2) Any electronic smoking device and any substances that  
19 may be aerosolized or vaporized by such device,  
20 whether the substance contains nicotine; or
- 21 (3) Any component, part, or accessory of any item  
22 described in paragraph (1) or (2), whether any of

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1           these contains tobacco or nicotine, including but not  
2           limited to filters, rolling papers, blunt or hemp  
3           wraps, hookahs, flavor enhancers, mouthpieces, and  
4           pipes.

5    "Tobacco product" does not mean drugs, devices, or combination  
6    products authorized for sale by the United States Food and Drug  
7    Administration, as those terms are defined in the Federal Food,  
8    Drug, and Cosmetic Act (21 U.S.C. §301 et seq.).

9           "Tobacco retail location" means any premises where tobacco  
10   products are sold or distributed to a consumer, including but  
11   not limited to any store, bar, lounge, cafe, stand, outlet,  
12   vehicle, cart, location, vending machine, or structure.

13           **§321-B Sale of flavored tobacco products; mislabeling as**  
14   **nicotine-free; prohibited.** (a) Beginning July 1, 2026, it  
15   shall be unlawful for any retailer to:

16           (1) Sell, offer for sale, or possess with the intent to  
17           sell, or offer for sale, a flavored tobacco product;  
18           or

19           (2) Mislabel as nicotine-free, or sell or market for sale  
20           as nicotine-free, any e-liquid product that contains  
21           nicotine.

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1           (b) A statement or claim, including but not limited to  
2 text, color, or images on the tobacco product's labeling or  
3 packaging that is used to explicitly or implicitly communicate  
4 that the tobacco product has a flavor other than tobacco, or  
5 that the tobacco product imparts a cooling or numbing sensation,  
6 made by a manufacturer or an agent or employee of the  
7 manufacturer, and directed to consumers or the public shall be  
8 prima facie evidence that the tobacco product is a flavored  
9 tobacco product. This includes but is not limited to public  
10 statements that a product has a minty or cooling effect, such as  
11 describing the product as "chill," "ice," "fresh," "arctic," or  
12 "frost."

13           (c) Any tobacco product found in a retailer's possession  
14 that is in violation of this part shall be considered contraband  
15 and may be seized by an inspector or be subject to immediate  
16 destruction or disposal in accordance with rules adopted by the  
17 department. The cost of proper disposal of electronic smoking  
18 devices and e-liquid products as hazardous waste pursuant to  
19 rules adopted pursuant to section 342J-4, shall be borne by the  
20 retailer.

21           (d) Any retailer who violates this part shall, after  
22 notice and opportunity for a hearing, be subject to a fine not

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1 less than \$100 nor more than \$1,000 for each separate offense.  
2 Each day of each violation constitutes a separate offense. Any  
3 fines collected by the department shall be deposited to the  
4 credit of the general fund. Any action taken to impose or  
5 collect the penalty provided for in this section shall be  
6 considered a civil action.

7 (e) Notwithstanding any other law to the contrary, any  
8 county may adopt a rule or ordinance that places greater  
9 restrictions on the access to tobacco products than provided in  
10 this part. In the case of a conflict between the restrictions  
11 in this part and any county rule or ordinance regarding access  
12 to tobacco products, the more stringent restrictions shall  
13 prevail.

14 **§321-C Inspectors; authority and access to records.** (a)  
15 The director may appoint, commission, or contract for services  
16 of a third party one or more inspectors as the exigencies of the  
17 enforcement of this part may require. Persons appointed,  
18 commissioned, or contracted for services under this part shall  
19 have and may exercise all the powers and authority outlined in  
20 the rules adopted pursuant to section 321-D.

21 (b) Information necessary to investigate violations of  
22 this part shall be made available to the department and any

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1 appointed, commissioned, or contracted inspectors of the  
2 department.

3       **§321-D Administrative rules.** (a) The department shall  
4 adopt rules pursuant to chapter 91 to effectuate the purposes of  
5 this part.

6       (b) Notwithstanding subsection (a), no later than June 30,  
7 2026, the department shall adopt interim rules, which shall be  
8 exempt from chapter 201M and from the public notice and public  
9 hearing requirements of chapter 91, to effectuate the purposes  
10 of this part; provided that the interim rules shall remain in  
11 effect until January 1, 2032, or until rules are adopted  
12 pursuant to subsection (a), whichever occurs sooner.

13       (c) The department may amend the interim rules adopted  
14 pursuant to subsection (b), exempt from chapter 201M and the  
15 public notice and public hearing requirements of chapter 91;  
16 provided that any amended interim rules shall remain in effect  
17 until January 1, 2032, or until rules are adopted pursuant to  
18 subsection (a), whichever occurs sooner.

19       **§321-E Contract for services.** Subject to section 26-36,  
20 the department may contract the services of a third party in  
21 accordance with chapter 103D for enforcement, inspections, or  
22 any other services needed to administer this part."

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1 SECTION 3. Section 328J-11.5, Hawaii Revised Statutes, is  
2 repealed.

3 [~~["§328J-11.5] Statewide concern. (a) Sales of~~  
4 ~~cigarettes, tobacco products, and electronic smoking devices are~~  
5 ~~a statewide concern. It is the intent of the legislature to~~  
6 ~~regulate the sale of cigarettes, tobacco products, and~~  
7 ~~electronic smoking devices in a uniform and exclusive manner.~~

8 ~~(b) All local ordinances or regulations that regulate the~~  
9 ~~sale of cigarettes, tobacco products, and electronic smoking~~  
10 ~~devices are preempted, and existing local laws and regulations~~  
11 ~~conflicting with this chapter are null and void.~~

12 ~~(c) Nothing in this chapter shall be construed to limit a~~  
13 ~~county's authority under section 328J-15." ]~~

14 SECTION 4. The department of health shall establish two  
15 full-time equivalent (2.0 FTE) program specialist positions to  
16 carry out the purposes of this Act, including reviewing,  
17 processing, and initiating inspections under the authority of  
18 the department of health and one full-time equivalent (1.0 FTE)  
19 hearings officer position to preside over administrative  
20 hearings and other related hearings duties to carry out the  
21 purposes of this Act.

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1           SECTION 5. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$1,000,000 or so much  
3 thereof as may be necessary for fiscal year 2025-2026 and the  
4 same sum or so much thereof as may be necessary for fiscal year  
5 2026-2027 to carry out the purposes of this Act, including the  
6 hiring of necessary staff.

7           The sums appropriated shall be expended by the department  
8 of health.

9           SECTION 6. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12           SECTION 7. If any provision of this Act or the application  
13 thereof to any person or circumstance is held invalid, the  
14 invalidity does not affect other provisions or applications of  
15 the Act that can be given effect without the invalid provision  
16 or application, and to this end the provisions of this Act are  
17 severable.

18           SECTION 8. In codifying the new sections added by section  
19 2 of this Act, the revisor of statutes shall substitute  
20 appropriate section numbers for the letters used in designating  
21 the new sections in this Act.

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1 SECTION 9. Statutory material to be repealed is bracketed  
2 and stricken.

3 SECTION 10. This Act, upon its approval, shall take effect  
4 on July 1, 2025.

5

6

INTRODUCED BY:

*M. D. A.*

7

BY REQUEST

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**Report Title:**

Department of Health; Flavored Tobacco Products; Sale; Ban; Appropriations

**Description:**

Beginning July 1, 2026, bans the sale of all flavored tobacco products and mislabeled e-liquid products. Establishes positions and appropriates funds to enforce the ban. Repeals section 328J-11.5, HRS. Effective July 1, 2025.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

## JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO HEALTH.

PURPOSE: To prohibit the sale, offering for sale, or possession with the intent to sell, or offer for sale, of all flavored tobacco products, including products that contain menthol and products that produce a cooling sensation, and the mislabeling as nicotine-free any e-liquid product containing nicotine within the State. To repeal state preemption of county ordinances concerning sales of cigarettes, tobacco products, and electronic smoking devices.

MEANS: Add a new part to chapter 321, Hawaii Revised Statutes (HRS). Repeal section 328J-11.5, HRS. Appropriate funds.

JUSTIFICATION: This bill responds to the epidemic of youth vaping due to the appeal of electronic smoking devices (ESDs) that feature flavored tobacco products, including menthol, that are a gateway to cigarettes and other substances. Additionally, international studies have identified counterfeit electronic cigarette products with mislabeled nicotine concentrations, necessitating better control and monitoring of nicotine containing products and sales outlets.<sup>1</sup>

Impact on the public: This bill addresses the youth vaping epidemic by prohibiting the sale or distribution of all flavored tobacco products. The fiscal impact of a ban on flavored tobacco products in Hawaii would result in modest reductions in Hawaii's tax revenues while at the same time leading to reductions in chronic diseases and health

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<sup>1</sup> Omaiye, E. E., Cordova, I., Davis, B., & Talbot, P. (2017). Counterfeit Electronic Cigarette Products with Mislabeled Nicotine Concentrations. *Tobacco Regulatory Science*, 3(3), 347-357. <https://doi.org/10.18001/TRS.3.3.10>

care spending, including Medicaid spending in the State.<sup>2</sup>

Most ESDs contain nicotine, which is addictive, and youth who regularly use ESDs are more likely to use tetrahydrocannabinol (THC) and other substances. Youth ESD users are four times more likely to become regular cigarette users. Menthol and other flavors are popular with younger smokers. The flavorants used in ESDs have been product tested for ingestion but not for inhalation. Data on the long-term consequences of regular inhalation of oils like vegetable glycerin and propylene glycol (derived from petroleum) that are used in ESDs are being collected. The evidence is mounting on the risks for lung and cardiovascular damage from vaping. This bill will not prohibit smokers from legally obtaining non-flavored tobacco products.

Public Health Impact:<sup>3</sup>

- More than 3,000 smokers (5.6% of menthol smokers) would quit as a result.
- 700 premature smoking-caused deaths would be avoided.
- Fewer youth would initiate smoking with menthol cigarettes.

Fiscal Impact:<sup>4</sup>

- At least \$48 million in long-term health care cost savings for the State.<sup>5</sup>

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<sup>2</sup> Chaloupka, F.J. *Potential Effects of a Ban on the Sale of Flavored Tobacco Products in Hawaii*, University of Illinois at Chicago, 2021

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> The projected health care savings and public health benefits are conservative because they do not include the impact on youth who will not start to smoke as a result of this policy. Preventing kids in Hawaii from becoming addicted smokers would secure millions of dollars in future health care cost savings.

- \$11.5 million decline in cigarette tax revenue (13.1% decline).
- \$1.3 million decline in other tobacco products tax revenue (14.9% decline).

Repeal of section 328J-11.5, HRS, is necessary to enable counties to enact ordinances in response to higher rates of flavored tobacco product use among neighbor island youth and adults.

Impact on the department and other agencies:

The Department will adopt interim administrative rules initially to enforce the ban on flavored tobacco products. The Department will contract out retail store investigations. The Department will establish the following three positions to provide education about the law to retailers and the public, monitor contracts, and enforce the ban: one hearings officer and two program specialists.

A reduction in tobacco use resulting from a comprehensive flavor ban would likely lead to significant reductions in health care spending.

GENERAL FUND: \$1,000,000 for fiscal year 2025-2026.  
\$1,000,000 for fiscal year 2026-2027.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH 590.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2025.