



HOUSE OF REPRESENTATIVES

TWENTY-SECOND LEGISLATURE

COMMONWEALTH OF THE NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

P.O. BOX 500586 SAIPAN, MP 96950

DONALD M. MANGLONA
CHAIRPERSON
WAYS AND MEANS COMMITTEE

Adopted - 6/16/2021

STANDING COMMITTEE REPORT NO. 22-17

DATE: MAY 13, 2021

RE: HOUSE BILL No. 22-54

The Honorable Edmund S. Villagomez
Speaker of the House of Representatives
Twenty-Second Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on Ways and Means to which House Bill No. 22-54 was referred, entitled:

“To update the definition of tobacco products in the CNMI’s excise tax laws; bring tobacco tax rates to the recommended level; set tobacco tax rates to increase with inflation; and invest tobacco tax revenues in health promotion and disease prevention and control programs in the CNMI; and for other purposes.”

begs leave to report as follows:

I. RECOMMENDATION:

After considerable discussion, your Committee recommends that H. B. NO. 22-54 be passed by the House in its current form.

II. ANALYSIS:

A. Purpose:

The purpose of this Act is to update the definition of tobacco products in the CNMI's excise tax laws; bring tobacco tax rates to the recommended level; set tobacco tax rates to increase with inflation; and invest tobacco tax revenues in health promotion and disease prevention and control programs in the CNMI.

B. Committee Findings:

Your Committee finds that the CNMI's current definition of "cigarette" under 4 CMC § 1401(d) of its excise tax laws allows for certain tobacco products to avoid the excise tax rate imposed on cigarettes. Specifically, tobacco products that are labelled as "cigars" or "filtered cigars" (also known as "little cigars"), when upon consideration of their packaging, design, intended use, and actual use, are more like cigarettes than cigars. Your Committee finds that other jurisdictions have recognized "little cigars" as cigarettes for state excise tax purposes, or otherwise increased the taxes imposed on these products to the same rate as cigarettes, to tax these products for what they are and appear to be, and not based solely on the labelling. This Act is updating the definition of "cigarette" in order to properly tax tobacco products.

Your Committee further finds that the World Health Organization (WHO) and the US Centers for Disease Control and Prevention (CDC) both recommend tax rates on tobacco to be a minimum of 70% of the retail price in order to increase the price to reduce the use of tobacco, and that tobacco tax rates be tied to inflation to ensure that tobacco remains prohibitively expensive to use. Your Committee finds that current taxation rates fall below this recommended minimum. This Act will increase the excise tax on cigarettes, as recommended, and will be tied to inflation as reflected in the following language: "Cigarettes, \$4.00 (four dollars) per every twenty cigarettes, or fractional equivalent thereof and thereafter \$0.50 cents per every twenty cigarettes or fractional equivalent thereof, every calendar year for six years. Beginning in the calendar year following the sixth year increase, and thereafter every three calendar years, the tax rate set forth in §1402(a)(16) shall be adjusted by the CNMI Division of Revenue and Taxation, based on the cumulative change for the previous three years in the Consumer Price Index (CPI) for all items as determined by the CNMI Department of Commerce. In the case of a reduction in the cumulative Consumer Price Index for Saipan, the tax rate shall remain the same and shall not be reduced. In the event that the requisite CPI data are not available, the CNMI Division of Revenue and Taxation shall use the CPI inflation rates published by the U.S. Bureau of Labor Statistics to calculate the tax rate adjustment;"

Just as important, your Committee finds that the CNMI's public health and health care infrastructure lacks the funding necessary to prevent and offset the negative health effects of tobacco use, and to establish sustained non-communicable disease and risk factor prevention and control programs. This Act will ensure that 45% of the cigarette tax authorized under 4 CMC §1402(a)(16) and 4 CMC §1402(a)(17) will be for the following purposes:

(1) for Commonwealth Healthcare Corporation activities relating to the monitoring of morbidity and mortality in the CNMI from illnesses which are caused or exacerbated by tobacco use;

(2) for the support of prenatal and maternal care programs, which incorporate smoking cessation assistance and guidance regarding the harmful effects of smoking on fetal development, and for programs designed to prevent or curb tobacco and betelnut use, prevent chronic disease, improve chronic disease management, and foster healthy living;

(3) for comprehensive school health education programs, which may be administered jointly by the Commonwealth Healthcare Corporation, the Public School System, and the Private School Coalition, designed to prevent non-communicable disease and related risk factors in youth;

(4) for targeted policy, systems and environmental changes that support healthy lifestyle behaviors for all people of the CNMI; and

(5) for data collection, research, monitoring, evaluation, and reporting on tobacco use in the CNMI and the effectiveness of tobacco control policies and programs.

Your Committee further finds that the Chief Executive Officer of the Commonwealth Healthcare Corporation shall prepare and issue to the Speaker of the House and the President of the Senate of the CNMI Legislature an annual report detailing the revenues and expenditures of the Tobacco Control Fund in accordance with generally accepted accounting principles. The annual report shall also, at a minimum, report on the qualitative and quantitative progress of programs and activities that receive funding from the Tobacco Control Fund.

Your Committee finds that in addition to funding critical health programs, there shall be established a separate fund to be known as the Tobacco Enforcement Fund. There shall be credited to said fund 5% of the tax authorized under 4 CMC §1402(a)(16) and 4 CMC §1402(a)(17), together with any penalties. The Tobacco Enforcement Fund shall be divided between the Division of Customs and the Division of Revenue and Taxation to be used for the implementation, collection, and enforcement of taxes assessed on cigarettes and all other tobacco products. The Division of Customs shall be allocated 3.5 percent and the Division of Revenue and Taxation shall be allocated 1.5 percent.

Your Committee concludes that this Act will update the definition of "cigarette" in the CNMI's excise tax laws in order to properly tax tobacco products for what they are; bring tobacco tax rates to the recommended level; set these rates to increase with inflation; and invest the tobacco tax revenues into health promotion and disease prevention and control programs for better health outcomes of CNMI residents.

Your Committee agrees with the intent of this Act, therefore, recommends that the House pass House Bill No. 22-54 in its current form.

C. Public Comments/Public Hearing:

Comments were received from the following:

1) Esther L. Muna, Chief Executive Officer, CHCC and Lauri B. Ogumoro, Chairperson, Board of Trustees

“The Commonwealth Healthcare Corporation (CHCC) is a devoted advocate for policy which furthers public health objectives and positive health outcomes. The purpose of HB 22-54 is to bring tobacco taxes to the recommended level, tie the rate to inflation, and invest revenues from the tax into health promotion and disease prevention. All three of these objectives are in line with best practices of tobacco control through taxation.”

2) Charnessa Lizama, Coordinator, Tobacco Prevention and Control Program, CHCC

“In tobacco use among youth in the CNMI, cigarettes and cigars have decreased but smokeless tobacco and vapor products have significantly increased. This is alarming as it puts our youth at risk of becoming dependent on nicotine and developing tobacco related health issues. Allowing price intervention such as increasing tobacco taxes can reduce the likelihood of our younger generations from nicotine addiction and tobacco related health issues.”

3) Hannah Isabel Shai, Coordinator, Diabetes Prevention and Control Program, CHCC

“As previously mentioned, increasing tobacco taxes decreases tobacco use. Decreasing tobacco use on a population level improves health outcomes, especially for chronic disease, such as diabetes and heart disease. Smoking increases risk for diabetes by up to 40%. For those in the CNMI who are already diagnosed with diabetes, smoking decreases the effectiveness of treatment, such as insulin. Which makes it more difficult to manage the disease. In addition, diabetes complications are more likely to occur and are much worse with smoking.”

4) Kaitlyn Neises-Mocanu, Special Assistant for Policy, Sustainability and Development, CHCC. Oral testimony on April 23, 2021 during its House Session. Also attached is her oral testimony during the Ways and Means meeting on May 13, 2021,

“The purpose of HB22-54 is to bring tobacco tax to the recommended level, tie the tax rate to inflation, and invest revenues from the tax into health promotion and disease prevention. All these objectives are best practices of tobacco control through taxation.”

“House Bill 22-54 will bring tobacco taxation to the evidence based level to maximize public health and the proposal significantly increase the proportion of tobacco tax of which go to help promotion, education, services and system changes is not only a model of tobacco control best practices but this funding assurance will also be a testament to this body’s vision for a healthier CNMI.”

5) Amber Mendiola, Community Member

“In support of HB22-54. The World Health Organization, the U.S Department of Health and Human Services, and a number of well-known Non-Profit Organizations have proof with wealth of knowledge and literature that increasing tobacco taxes does reduce the burden of chronic diseases in (inaudible) populations most especially in rural communities such as our Commonwealth.”

“Several years ago, WHO did a return on investment study with countries that supported cancer prevention, it found that for every \$1 spent on prevention, \$3 was saved on treatment. That is a considerable amount of money saved when you look at how much treatment costs are.”

6) David R. Maratita, Director, Alcoholic Beverage and Tobacco Control (ABTC), Department of Commerce

“I am here on behalf of our Acting Secretary, Mr. Edward Deleon Guerrero, we would get you a copy of our prepared comment, but we would like to assure this body that our support goes with our partnership with CHCC with respect to House Bill 22-54 on tobacco tax.”

7) David DLG. Atalig, Secretary, Department of Finance

“While, again, the intents of this legislation are commendable, I would recommend that the Legislature first commit resources to a study of the present market to determine the impacts of this tax on domestic consumption patterns of residents, and, if that data sufficiently provides the rationale for implementation of rates and its ability to achieve the stated policy objectives, that resources further be provided to the enforcement of this law to ensure the unintended consequences that are prevalent across the world are ameliorated. Should the legislature provide the necessary funding to support the increased enforcement of this legislation, the Department of Finance would be pleased to extend its support of House Bill 22-54.”

Comments received have been attached as part of this committee report.

D. Legislative History:

House Bill No. 22-54 was introduced by Representative Christina M.E. Sablan on April 23, 2021 and was subsequently referred to the House Standing Committee on Ways and Means for disposition.

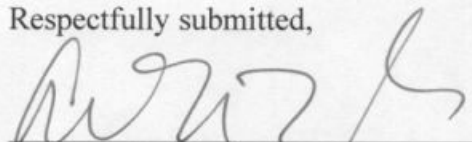
E. Cost Benefit:

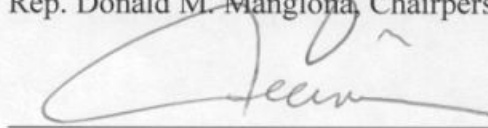
The enactment of House Bill No. 22-54 will result in additional cost to the CNMI Government in the form of additional staffing, enforcement and other resources needed to effectively carry out the intent of the proposed legislation. However, the proposed legislation aims to generate additional revenues that will help bear the cost but more importantly, will greatly benefit the health and welfare of our citizens.

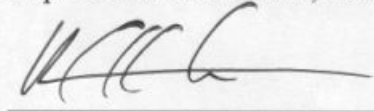
III. CONCLUSION:

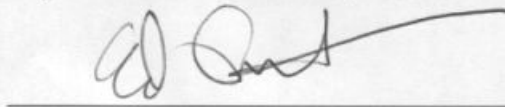
The Committee is in accord with the intent and purpose of H. B. NO. 22-54, and recommends its passage in its current form.

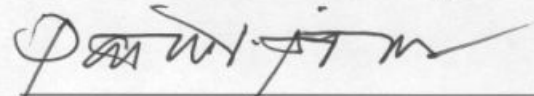
Respectfully submitted,

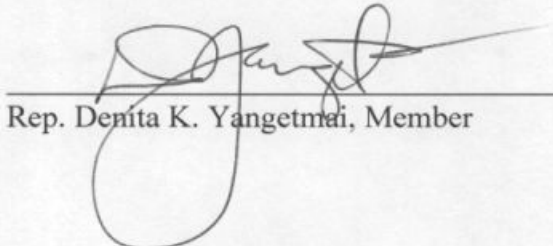

Rep. Donald M. Manglona, Chairperson


Rep. Celina R. Babauta, Member



Rep. Vicente C. Camacho, Member

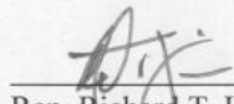

Rep. Edwin K. Propst, Member



Rep. Patrick H. San Nicolas, Member



Rep. Denita K. Yangetmai, Member


Rep. Ivan A. Blanco, Vice Chair


Rep. Sheila J. Babauta, Member

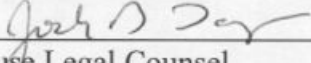

Rep. Richard T. Lizama, Member


Rep. Christina M.E. Sablan, Member


Rep. Leila H.F.C. Staffler, Member

 For Committee Report
Rep. Ralph N. Yumul, Member

Reviewed by:


House Legal Counsel

Attachment: Comments dated April 23, 2021: Esther L. Muna, CEO, CHCC and Lauri B. Ogumoro, Chairperson, Board of Trustees
 Comments dated April 23, 2021: Charnessa Lizama, Coordinator, Tobacco Prevention and Control Program, CHCC
 Comments dated April 23, 2021: Hannah Isabel Shai, Coordinator, Diabetes Prevention and Control Program, CHCC
 Comments dated May 7, 2021: David DLG. Atalig, Secretary, Dept. of Finance
 Comments dated May 13, 2021: Kaitlyn Neises, Special Assistant for Policy, Sustainability, and Development, CHCC



Commonwealth Healthcare Corporation

Commonwealth of the Northern Mariana Islands

1 Lower Navy Hill Road Navy Hill, Saipan, MP 96950



CHCC-BOT21-001

April 23, 2021

Honorable Representative Edmund Villagomez
Speaker of the House
CNMI House of Representatives
22nd CNMI Legislature

Re: House Bill 22-54 *"To update the definition of tobacco products in the CNMI's excise tax laws; bring tobacco tax rates to the recommended level; set tobacco tax rates to increase with inflation; and invest tobacco tax revenues in health promotion and disease prevention and control programs in the CNMI; and for other purposes."*

Dear Speaker Villagomez,

The Commonwealth Healthcare Corporation (CHCC) is a devoted advocate for policy which furthers public health objectives and positive health outcomes. The purpose of HB 22-54 is to bring tobacco taxes to the recommended level, tie the rate to inflation, and invest revenues from the tax into health promotion and disease prevention. All three of these objectives are in line with best practices of tobacco control through taxation.

Scientific evidence clearly indicates that tobacco use is one of the main risk factors for a number of chronic diseases, including cancer, lung diseases, and cardiovascular diseases. Tobacco smoke contains toxic and cancer-causing chemicals that are harmful to both smokers and anyone around them. One key strategy which has been effective in curbing tobacco use around the globe is taxation. Cost is the vital factor of smoking uptake and cessation¹, and taxing tobacco at high rates works to reduce smoking and improve health².

Thanks in large part to stronger policy³, smoking is on the decline in the CNMI. In a 2011 study⁴, 28.3% of adults reported current use of cigarettes (use in the last 30 days), with 21.1% of respondents reporting using betel nut with tobacco (use in the last 30 days). In 2014, cigarette taxes were increased from \$2.00

¹ WHO technical manual on tobacco tax administration. Geneva: World Health Organization, 2010.

Jha P, Chaloupka FJ. Curbing the epidemic: governments and the economics of tobacco control. Washington DC: World Bank, 1999.

Jha P, Chaloupka FJ, Moore J, et al. Tobacco addiction: In: Jamison DT, Breman JG, Measham AR, et al., eds. Disease control priorities in developing countries. 2nd ed. Washington, DC: World Bank and Oxford University Press, 2006:869-86. International Agency for Research on Cancer. Effectiveness of tax and price policies for tobacco control: IARC handbook of cancer prevention, vol. 14. Lyon, France: IARC, 2011.

² Ross H, Chaloupka FJ. The effect of cigarette prices on youth smoking. Health Econ. 2003;12(3):217-230. doi:10.1002/heh.709

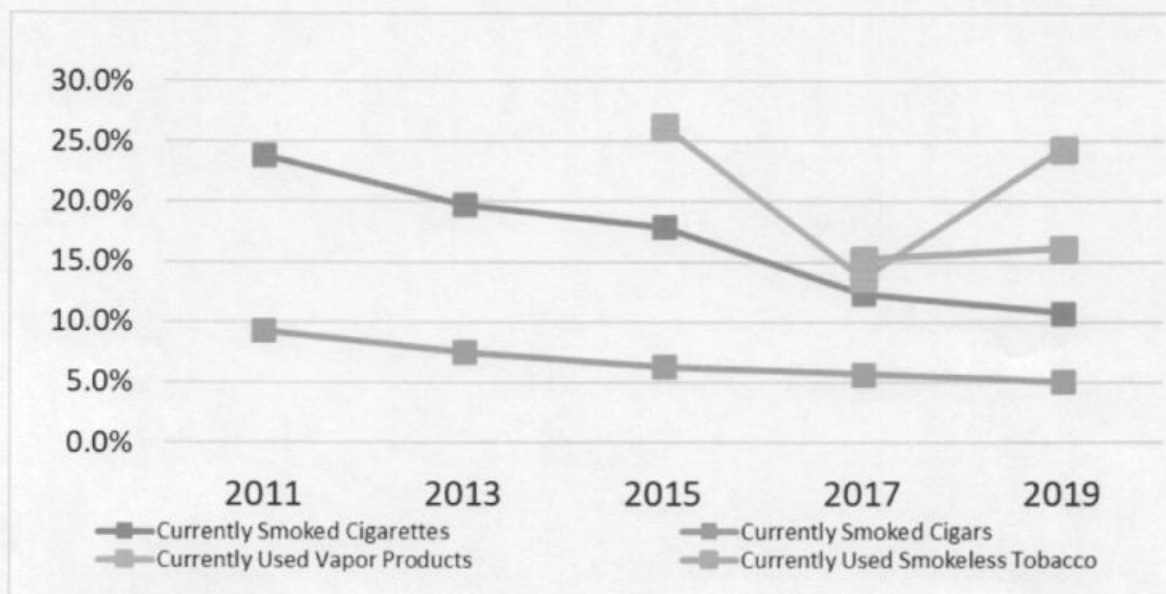
³ Including the CNMI's Smoke Free Air Act, which came into effect in 2009.

⁴ Wil Maui. A report on the 2011 Behavioral Health Survey Commonwealth of the Northern Mariana Islands. Community Guidance Center Department of Public Health, 2011

per pack to \$2.75 per pack. In 2016, a lower proportion of adults in the CNMI (25.2%) reported smoking cigarettes (net decrease of 3.5% since 2011), and 16.7% reported chewing betelnut⁵ with tobacco (net decrease of 4.4% since 2011)⁶. Pursuant to Public Law 18-64, there was another cigarette excise tax increase to \$3.75 per pack implemented in 2017, but there is no data on cigarette use available after this increase. Another Non Communicable Diseases & Risk Factor Hybrid Surveillance Report survey is scheduled to take place later this year which will show any impact of the 2017 tax increase.

In tobacco use among youth in the CNMI, there have also been significant declines in the use of cigarettes and cigars, but smokeless tobacco and vapor products continue to be pervasive in CNMI high schools. CNMI PL 21-40 adopted the federal 21, which prohibits the sale of tobacco and other nicotine products to anyone under the age of 21. This law is expected to result in further declines of all tobacco and nicotine products among youth in the CNMI.

Figure 1: CNMI High School Youth Risk Behavior Survey, 2011 to 2019 Selected Factors ("Current Use" is defined as used at least one day in the 30 days before the survey)



Data for smokeless tobacco use is not available before 2017, and data for vapor product use is not available before 2015. Data from High School Youth Risk Behavior Survey for the Northern Mariana Islands available at nccd.cdc.gov/Youthonline

Though CNMI tobacco policy has made a dent in tobacco use, we still have not reached the recommended best practices of tobacco taxation according to the World Health Organization (WHO). According to the WHO, tobacco excise tax levels should be at least 70% of the retail price of tobacco

⁵ The betel nut statistic is significant because cigarettes are the most commonly used type of tobacco to mix with betelnut. 77.6% of people who chew betelnut with tobacco report using cigarettes to mix with their betelnut, so an increase in cigarette taxes would influence the use in the betelnut chewing population as well (2016 CNMI NCD and Risk Factor Survey).

⁶ 2016 CNMI NCD and Risk Factor Survey

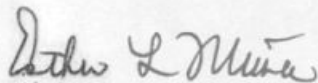
products⁷. Currently, we estimate that the cigarette excise taxes are roughly 60% of the retail price, depending on the brand.

Further, if the CNMI Legislature wishes to increase tobacco taxes to further reduce tobacco use, a reasonable proportion of the funds must go to tobacco control, cessation, and other health mitigation programs. According to 3 CMC §2177, "30% of the *increase* in the cigarette tax authorized under 4 CMC §1402(a)(16)" [emphasis added] shall be credited to the tobacco control fund. From FY 2017 to FY 2019, \$9.5mil was credited to the tobacco control fund⁸ of which, roughly 20% was transferred to the CHCC. If the requisite 30% of the increase was credited to the tobacco control fund, this means that roughly only 6% of the cigarette tax *increase* was appropriated for health programs. This is far lower than the CDC's recommendation of at a bare minimum 12% of all tobacco tax revenue (not just a percentage of tax increases of some products). "If all states were to use a greater portion of future tobacco revenues to fund tobacco control and prevention programs at the levels recommended by CDC they could achieve larger and more rapid reductions in smoking and associated morbidity, mortality, and health-care costs"⁹. FY 2017 and FY 2018 are the only years in the CHCC's history when any of the tobacco control funds were received by the CHCC. The amount of money credited to the tobacco control fund in FY 2020 and 2021 is not known because, unlike previous years, the tobacco control fund is not listed in the Commonwealth budgets for these years.

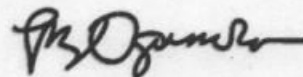
The 45% of all tobacco tax revenues proposed in this bill for health-related purposes would be much-needed support for our health system, and put local health professionals in the drivers' seat to set and achieve locally set health objectives. Reliance on federal grant funding for health initiatives, as we are currently, limits the ability for our public health professionals to set locally relevant objectives and build programs appropriate to our context.

Our staff see patients and tobacco cessation clients who suffer from addictions to nicotine every day and must treat them for chronic diseases concomitant with tobacco use. Allocating tobacco control funds will provide support to purchase nicotine replacement therapy, smoking aid medications for patients and cessation clients¹⁰, sustain program staff to expand our program efforts, and reduce tobacco prevalence rates in the CNMI. Staff members put in a great amount of effort to enforce a strict no smoking policy on our campuses, and to promote our tobacco cessation program. We do this because we know the research, we see the outcomes of tobacco use, and we believe in a tobacco-free CNMI.

Thank you for your time and your consideration of our comments,



Esther L. Muna, PhD, FACHE
Chief Executive Officer



Lauri B. Ogumoro, LMSW, ACSW
Chairperson, Board of Trustees

⁷ https://www.who.int/tobacco/publications/en_tfi_tob_tax_chapter5.pdf?ua=1

⁸ PL 19-68, PL 20-11, and PL 20-67

⁹ State Tobacco Revenues Compared with Tobacco Control Appropriations — United States, 1998–2010 Weekly May 25, 2012 / 61(20);370-374. Centers for Disease Control and Prevention.

¹⁰ Tobacco related federal grant funding does not cover the costs of nicotine replacement therapy or other cessation tools

Good Morning Honorable Members of the House:

My name is Charnessa Lizama, the Tobacco Prevention and Control Program Coordinator at the Commonwealth Healthcare Corporation. Tobacco is an issue. Globally tobacco is the leading preventable cause of death. It is the 6th of the 8 leading causes of death. According to the Centers for Disease Control and Prevention (CDC), worldwide, tobacco use causes more than 7 million deaths per year. If the pattern of tobacco use doesn't change more than 8 million people will die from disease related to tobacco use by 2030 (CDC).

The World Health Organization (WHO) states that increasing tobacco taxes is an effective strategy in reducing tobacco prevalence rates such as reducing relapse among those who have quit tobacco and reducing consumption among continuing users. In 2012, the Philippines successfully raised their tobacco taxes. The government generates a bigger revenue and that 85% went to health coverage and improved healthcare facilities. It is said that higher prices increase the likelihood of quitting tobacco and prevents initiation of tobacco use among our youth.

In tobacco use among youth in the CNMI, cigarettes and cigars have decreased, but smokeless tobacco and vapor products have significantly increased. This is alarming as it puts our youth at risk of becoming dependent on nicotine and developing tobacco related health issues. Allowing price intervention such as increasing tobacco taxes can reduce the likelihood of our younger generations from nicotine addiction and tobacco related health issues.

What does this mean for the CNMI? Referencing the 2016 NCD Hybrid Survey, 25%(1 out of 4 adults) currently smoke cigarettes and 20% (1 out of 5 adults) chew betelnut, and majority add tobacco to their chew. The data clearly states that our people are currently suffering from various non communicable diseases such as cancer. We are seeing individuals below 40 diagnosed with Stage 3 or Stage 4 cancer, we are seeing our children live a life without their role models, and parents not having the opportunity to live long to see their children grow.

Overall, decreasing tobacco use will help save lives of our present and future generations to come.

*Read on
4/23/2021*

HB 22-54

Good morning honorable members of the House,

My name is Hannah Isabel Shai, the Diabetes Prevention and Control Program Coordinator at the CHCC. As previously mentioned, increasing tobacco taxes decreases tobacco use. Decreasing tobacco use on a population level improves health outcomes, especially for chronic disease, such as diabetes and heart disease.

Smoking increases risk for diabetes by up to 40%. For those in the CNMI who are already diagnosed with diabetes, smoking decreases the effectiveness of treatment, such as insulin. Which makes it more difficult to manage the disease. In addition, diabetes complications are more likely to occur and are much worse with smoking. These complications, such as amputation, kidney disease, and heart attacks, are already prevalent in our community. CHCC data from 2019 estimates that 43% of patients diagnosed with diabetes have stage 3 chronic kidney disease or greater. Tobacco use further exacerbates these issues, causing burden to the health system and the quality of life of our people.

In addition, 21% of heart disease deaths are caused by tobacco use and secondhand smoke exposure. These deaths are completely avoidable. Eliminating tobacco use could save 2 of every 10 people with heart disease. Not only for those who smoke, but also for those who are exposed to secondhand smoke. It is estimated that heart disease risk increases by up to 30% solely from secondhand smoke exposure alone.

Overall, decreasing tobacco use will greatly improve health outcomes not only for current tobacco users, but for all in the CNMI.

Rec'd 4/23/2021



Office of the Secretary
Department of Finance



P. O. Box 5234 CHRB SAIPAN, MP 96950

TEL.: (670) 664-1100 FAX: (670) 664-1115

May 7, 2021

SFL 2021-123

Hon. Donald Manglona
Chairman
Committee on Ways & Means
22nd Commonwealth Legislature
P.O. Box 500586, Saipan, MP 96950
Tel: 1-(670) 664-8950

Subject: Commonwealth of the Northern Mariana Islands Department of Finance
Comments and Recommendations on House Bill 22-54, "To update the definition of tobacco products in the CNMI's excise tax laws; bring tobacco tax rates to the recommended level; set tobacco tax rates to increase with inflation; and invest tobacco tax revenues in health promotion and disease prevention and control programs in the CNMI; and for other purposes."

Dear Chairman Manglona:

On behalf of the Commonwealth of the Northern Mariana Islands (CNMI) Department of Finance, I thank you for the opportunity to provide comments and recommendations on House Bill 22-54, to update the definition of tobacco products in the CNMI's excise tax laws; bring tobacco tax rates to the recommended level; set tobacco tax rates to increase with inflation; and invest tobacco tax revenues in health promotion and disease prevention and control programs in the CNMI; and for other purposes.

In an effort to provide our comments and recommendations on this legislation, the Department of Finance sought to evaluate the impact of this legislation on the Commonwealth's ability to regulate and enforce payment of the new tax rates.

While the intent of the legislation is well founded in the science related to the health impacts caused by tobacco products, one would note that this legislation aims to address these impacts through influencing the economic actions of individuals in the economy. As such, there is a noticeable lack of research, findings, or evidence that an increase in taxes on this product will achieve an optimal tax rate that would discourage consumption or prevent the occurrence of a more pernicious black market for cigarettes.

There is considerable research on optimal tax rates, which are determinant upon the consumption patterns and price elasticities of demand for a given market. The implementation of an indirect tax on tobacco products must account for the unintended consumer choices that would arise in the advent of increased cost as a variance between market value for the product, the influenced value post taxes, and the street value attributable that account for the demand for the product and the risk being undertaken to undertake an illicit sale.

Research on the impact of cigarette taxes on the fostering of harmful black markets is similarly present. Kulick, J., et al., in the *International Journal of Law, Crime and Justice* under the article titled "Unintended consequences of cigarette prohibition, regulation, and taxation" (2016) found that "Laws that prohibit, regulate, or tax cigarettes can generate illicit markets for tobacco products. Illicit markets both reduce the efficacy of policies intended to improve public health and create harms of their own."

This is not to discount the potential societal benefits that may arise from Pigouvian taxes, which are possible. The concern lies in the lack of data by which the CNMI should measure the impacts caused by an artificial increase in price at the level proposed in this legislation. Does the Legislature have an estimate to the extent to which this level of taxation will influence consumer purchases and use of tobacco? Is there a marginal decrease that is anticipated toward consumption that would result from the proposed incremental increase in tax rates?

One critical component missing from this legislation that would be essential in ensuring successful implementation of the new tax rates and the limitations on the negative consequences that may arise in its advent is increased resources toward enforcement. The legislation lists the programs that will benefit from the revenue generated for the tax increase, which are primarily geared toward the advancement of healthcare and educational programs aimed at addressing and mitigating impacts of smoking tobacco. It should be noted that this legislation increases the responsibilities of enforcement officers to monitor and control for compliance with the significant increase in tax without any additional resources to do so.

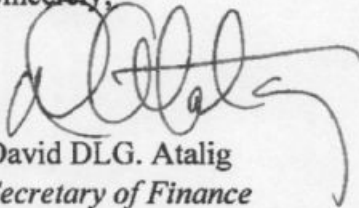
Again, Kulick et al. address the potential problems with this oversight. According to the research, they provide the following scenario. "Now suppose that participation in the market for illicit cigarettes increases (as a result of a menthol ban, for instance), with no concomitant increase in enforcement. The higher the overall violation rate, the smaller the risk of punishment for any individual violator. This relation yields a positive-feedback loop - vicious cycle of 'enforcement swamping' The reduced individual risk of punishment prompts others to join the illicit market, increasing the number of violators, whereupon the cycle begins anew. This feedback magnifies the effect of the initial increase in illicit activity and, depending on the circumstances of the illicit market, can 'tip' the market into a high-violation equilibrium that is difficult and costly to disrupt."

Wider enforcement is also encumbered in that federal law relating to the trafficking in contraband cigarettes and smokeless tobacco (18 U.S.C. §§ 2341-2346), excludes from its coverage area both Guam and the CNMI.

While, again, the intents of this legislation are commendable, I would recommend that the Legislature first commit resources to a study of the present market to determine the impacts of this tax on domestic consumption patterns of residents, and, if that data sufficiently provides the rationale for implementation of rates and its ability to achieve the stated policy objectives, that resources further be provided to the enforcement of this law to ensure the unintended consequences that are prevalent across the world are ameliorated. Should the legislature provide the necessary funding to support the increased enforcement of this legislation, the Department of Finance would be pleased to extend its support of House Bill 22-54.

On behalf of the CNMI Department of Finance, I thank you for the opportunity to provide this letter, if you have any questions or need additional information, please do not hesitate to contact me at 664-1100 or email at david.atalig@dof.gov.mp.

Sincerely,

A handwritten signature in black ink, appearing to read 'David DLG. Atalig', with a long, sweeping horizontal line extending to the right.

David DLG. Atalig
Secretary of Finance

Public Comments: Oral testimony
Kaitlyn Neises, Special Assistant for Policy, Sustainability, and Development
Commonwealth Healthcare Corporation
House Ways and Means Committee Meeting
05/13/2021

Good afternoon honorable chairman and members of this committee. My name is Kaitlyn Neises and I'm the special assistant for policy, sustainability, and development at the Commonwealth Healthcare Corporation. If you attended the public comments portion of the session when HB 22-54 was introduced, which I believe most of you did, you heard testimony from public health professionals at the CHCC about the harms of tobacco, the efficacy of taxation as an intervention to reduce prevalence of tobacco use, and the need for improved public health funding to prevent and mitigate harms of tobacco. Much of this information is included in the CHCC's written comments to this committee. If this committee requires additional information about the harms of tobacco use, or taxation as an intervention strategy, we are happy to provide additional information as requested.

I think the negative health consequences of tobacco use are already well-established, and tobacco taxation is already well-researched as an effective tobacco control strategy, so I wanted to make you, as policymakers, aware of the extent of tobacco industry interference with state and local policy, even in the smallest communities such as ours. Well-funded interference strategies of the tobacco industry include but are not limited to:

- Funding efforts to oppose policy change, by crafting marketing campaigns on proposed policies which are intended to mislead voters, and funding groups and hiring people to appear as "grass roots" organizers in opposition of a proposed policy.
- Using political donations to wield influence with policymakers.
- Direct lobbying with legislators. In 2014, Altria and Reynolds American, two large tobacco industry representatives, together funded more than 450 registered lobbyists at the state level in the US.
- Promoting weaker policies through its own legislation or substitute policies which are less effective, and draw attention away from effective policy.
- Funding other organizations to oppose tobacco control policies on their behalf.
- Lawsuits and threats of litigation, and
- Funding research which promotes their policy position.

One such example of industry funded research is a paper called the "Unintended Consequences of Cigarette Prohibition, Regulation, and Taxation", which suggests that the potential societal harms of cigarette regulation may outweigh the benefits, and that more research is necessary before any further tobacco regulation is considered.

The research presented in this paper was funded by a subsidiary of Altria Group, Inc., which is a front for Philip Morris companies, one of the world's largest producers and marketers of tobacco, cigarettes and related products. One specific policy objective of Altria Group, as stated on their website, is to "Protect the Legal, Regulated Market from Illegal Trade". In other words, the Altria Group would like to protect the interests of tobacco companies which operate by the rules. This, I think, is a fair objective of any law-abiding industry stakeholder. However, research funded by Altria would be more concerned with the

possibility of an illicit tobacco market than public health. Raising alarm around risk of illicit trade aligns with Altria's stated objective to protect the regulated tobacco industry while simultaneously raising questions as to the efficacy of proven tobacco control strategies. Altria and other tobacco lobbyists are well-known for supporting weaker policies and claiming that additional research is necessary to distract attention from effective tobacco control interventions.

The same year this industry-funded paper was published, the National Research Council and Institute of Medicine's report, "Understanding the U.S. Illicit Tobacco Market: Characteristics, Policy Context, and Lessons from International Experiences", found that "one of the tobacco industry's principal arguments against increased tax rates and more stringent regulatory changes is that such measures will fuel the growth of the illicit tobacco market, although industry-sponsored estimates of the size of the illicit market tend to be inflated. More generally, concerns have been raised about the quality and transparency of industry funded research on the illicit tobacco trade". In 2019, a literature review published by researchers at the Department of Health at the University of Bath, after looking at the tobacco industry's assessments of the level of illicit trade around the world, found significant methodological problems with the industry's data collection and analyses, and misleading reporting of results in ways that overestimated the extent of the issue.

As we all are growing painfully and increasingly aware, using critical thinking about the sources of information that we use to make decisions, and the evaluating the motivations behind those providing this information is essential to well-informed evidence-based policy.

Evidence shows the experience of a broad range of countries that have increased revenues and reduced tobacco use through taxation even in the presence of illicit trade. The illicit trade argument should not stand in the way of tax increases to protect public health. Administrative measures should be strengthened to effectively tackle illicit trade. This is important because public health and governments pay a high price from illicit trade, which undermines tobacco control efforts and costs governments significant revenue losses.

HB 22-054 proposes to earmark 5% of the tobacco control fund for the implementation, collection, and enforcement of taxes assessed on cigarettes and all other tobacco products. I don't know the total amount of revenue that this proposal is anticipated to generate, but I would guess 5% of the proposed tax would be upwards of a million dollars.

The 2020 fiscal summit recommended a \$1 increase on cigarettes and tobacco products. The proposed increase for cigarettes in HB 22-54 would reach this goal increase in three years, allowing for gradual, incremental implementation.

Thank you for your time and for the hard work you all are putting into the consideration of HB 22-54.

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

Regular Session, 2021

H. B. 22- **54**

A BILL FOR AN ACT

To update the definition of tobacco products in the CNMI's excise tax laws; bring tobacco tax rates to the recommended level; set tobacco tax rates to increase with inflation; and invest tobacco tax revenues in health promotion and disease prevention and control programs in the CNMI; and for other purposes.

BE IT ENACTED BY THE 22ND NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:

1 **Section 1. Findings and Purpose.** The Legislature finds that tobacco use
2 is a critical risk factor associated with the onset and poor health outcomes of the
3 most common diseases which burden the Commonwealth of the Northern Mariana
4 Islands (CNMI or Commonwealth). Non-communicable diseases such as diabetes,
5 heart disease, and cancer prematurely take the lives of more CNMI residents than
6 any other cause. Tobacco use is a risk factor for diabetes, heart disease,
7 hypertension, various cancers, and chronic obstructive pulmonary disease. When
8 coupled with other unhealthy habits such as poor diet and physical inactivity,
9 tobacco use has an even greater chance of limiting life expectancy.

10 According to the 2016 CNMI Non-Communicable Diseases and Risk
11 Factor Hybrid Survey, one out of four (25.2%) of adults in the Commonwealth

1 smoke cigarettes. One out of five (19.1%) adults in the Commonwealth chew
2 betelnut, and the majority (87.6%) add tobacco to their betelnut. Moreover, the top
3 three (3) ethnic groups that utilize tobacco are Chamorros, Carolinians, and other
4 Pacific Islanders. Roughly 35% of all Chamorros, Carolinians, and other Pacific
5 Islanders were cigarette smokers in 2016, which is 10% higher than the overall
6 adult smoking rate in the CNMI. The Legislature finds that these ethnic groups are
7 also disproportionately impacted by non-communicable diseases, and suffer as a
8 result from lower quality of life and premature death.

9 The Legislature finds that smokers have a 30% to 40% higher risk of type
10 2 diabetes than nonsmokers, and this risk increases with the number of cigarettes
11 smoked per day. The Legislature further finds that in 2016, 25% of Chamorro adults
12 had diabetes. People who have diabetes are also significantly affected by smoking
13 habits. High levels of nicotine from smoking can impede the efficacy of insulin, so
14 those with diabetes who smoke need larger doses of insulin to control their blood
15 sugar. Moreover, when patients with diabetes are able to quit smoking, their
16 condition can become easier to manage. The Legislature finds that strategies to
17 reduce tobacco use, such as tobacco taxes, are important strategies to prevent type
18 2 diabetes in the Commonwealth.

19 The Legislature further finds that in 2016, 58% of all Chamorro adults in
20 the CNMI had high blood pressure. High blood pressure damages arteries and
21 veins, which raises the risk of stroke, kidney failure, heart disease, and heart attack.

1 Tobacco use further increases the risk of heart attack and stroke, making Chamorro
2 adults in the Commonwealth particularly vulnerable to morbidity and mortality due
3 to poor cardiovascular health.

4 The Legislature finds that according to the 2015 Cancer in U.S. Affiliated
5 Pacific Islands Report (USAPI), Breast Cancer is the leading cancer in the CNMI
6 followed by Colon & Rectum, Lung & Bronchus, and Uterus. All four cancers have
7 tobacco as one of the contributing risk factors.

8 The Legislature also finds that according to the 2019 Youth Risk Behavior
9 Survey (YRBS) conducted by the CNMI Public School System, 26.3% of middle
10 school students had tried smoking cigarettes. Of the 26.3%, 10.8% first tried
11 cigarette smoking before 11 years old. Further, 2.2% of middle school students
12 smoked more than 10 cigarettes per day, 43.4% of all middle schoolers reported
13 ever trying an electronic vapor product, and 9.6% reported currently using
14 smokeless tobacco. The 2019 YRBS also reports that 44.8% of high school students
15 had ever tried smoking cigarettes. Of the 44.8%, 18% first tried cigarette smoking
16 before 13 years old and 4.1% were smoking more than 10 cigarettes per day. Of
17 CNMI high school students, 64.5% reported ever trying an electronic vapor
18 product, and 16.1% reported currently using smokeless tobacco. The Legislature
19 finds there is much evidence to support that tobacco use at an early age can lead to
20 more unhealthy behaviors, including alcohol and drug use, as adults. Tobacco
21 taxation is an especially effective strategy to reduce the likelihood that young

1 people use tobacco. The Legislature finds that reduced consumption of tobacco in
2 the CNMI will improve health outcomes, enhance quality of life, and extend life
3 expectancy.

4 The Legislature finds that the World Health Organization (WHO) and the
5 US Centers for Disease Control and Prevention (CDC) both recommend tax rates
6 on tobacco to be a minimum of 70% of the retail price in order to increase the price
7 to reduce the use of tobacco, and that tobacco tax rates be tied to inflation to ensure
8 that tobacco remains prohibitively expensive to use. The Legislature finds that
9 current taxation rates fall below this recommended minimum.

10 The Legislature also finds that the CNMI's current definition of "cigarette"
11 under 4 CMC § 1401(d) of its excise tax laws allows for certain tobacco products
12 to avoid the excise tax rate imposed on cigarettes. Specifically, tobacco products
13 that are labelled as "cigars" or "filtered cigars" (also known as "little cigars"), when
14 upon consideration of their packaging, design, intended use, and actual use, are
15 more like cigarettes than cigars. The Legislature finds that other jurisdictions have
16 recognized "little cigars" as cigarettes for state excise tax purposes, or otherwise
17 increased the taxes imposed on these products to the same rate as cigarettes, to tax
18 these products for what they are and appear to be, and not based solely on the
19 labelling.

20 The Legislature further finds that the CNMI's public health and health care
21 infrastructure lacks the funding necessary to prevent and offset the negative health

1 effects of tobacco use, and to establish sustained non-communicable disease and
2 risk factor prevention and control programs. Through this Act, the Legislature aims
3 to update the definition of "cigarette" in the CNMI's excise tax laws in order to
4 properly tax tobacco products for what they are; bring tobacco tax rates to the
5 recommended level; set these rates to increase with inflation; and invest the tobacco
6 tax revenues into health promotion and disease prevention and control programs
7 for better health outcomes of CNMI residents.

8 **Section 2. Amendment.** 4 CMC §1401 (d) is hereby amended to read as
9 follows:

10 "§1401(d) "Cigarette" means and includes any preparation of finely
11 cut tobacco or other smokable substance, material, or product rolled in paper and
12 enclosed and packed so that it is held together for smoking; any product that
13 contains nicotine, is intended to be burned or heated under ordinary conditions of
14 use, and consists of or contains: (1) any roll of tobacco wrapped in paper or in any
15 substance not containing tobacco; or (2) tobacco, in any form, that is functional in
16 the product, which because of its appearance, the type of tobacco used in the filler,
17 or its packaging and labeling, is likely to be offered to, or purchased by, consumers
18 as a cigarette; or (3) any roll of tobacco wrapped in any substance containing
19 tobacco which, because of its appearance, the type of tobacco used in the filler, or
20 its packaging and labeling, is likely to be offered to, or purchased by, consumers as
21 a cigarette described in clause (1) of this definition. The term "cigarette" includes

1 "roll-your-own" tobacco (i.e., any tobacco which, because of its appearance, type,
2 packaging, or labeling is suitable for use and likely to be offered to, or purchased
3 by, consumers as tobacco for making cigarettes). For the purposes of this definition
4 of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one
5 individual "cigarette." The term "cigarette" shall not include cigars products
6 wrapped entirely in whole tobacco leaf that do not have a filter."

7 **Section 3. Amendment.** 4 CMC §1402(a)(16) and (17) are hereby
8 amended to read as follows:

9 "§1402.

10 (a) General. For the privilege of first sale, use, manufacture, lease or rental
11 of goods, commodities, resources, or merchandise in the Commonwealth for
12 business purposes or for personal use exceeding the value specified in subsection
13 (c) of this section, there is imposed an excise tax as follows:

14 (16) Cigarettes, ~~\$2.75 (two dollars and seventy-five cents)~~ \$4.00
15 (four dollars) per every twenty cigarettes, or fractional equivalent thereof;
16 for three years after September 16, 2014 thereafter, \$3.75 (three dollars and
17 seventy-five cents) and thereafter \$0.50 cents per every twenty cigarettes or
18 fractional equivalent thereof, every calendar year for six years. Beginning
19 in the calendar year following the sixth year increase, and thereafter every
20 three calendar years, the tax rate set forth in §1402(a)(16) shall be adjusted
21 by the CNMI Division of Revenue and Taxation, based on the cumulative

1 change for the previous three years in the Consumer Price Index (CPI) for
2 all items as determined by the CNMI Department of Commerce. In the case
3 of a reduction in the cumulative Consumer Price Index for Saipan, the tax
4 rate shall remain the same and shall not be reduced. In the event that the
5 requisite CPI data are not available, the CNMI Division of Revenue and
6 Taxation shall use the CPI inflation rates published by the U.S. Bureau of
7 Labor Statistics to calculate the tax rate adjustment;

8 (17) Tobacco, ~~or tobacco substitutes,~~ or vaporizable products and
9 vaporizer, liquids, chewable tobacco products, ~~or and~~ other smokable or
10 snuffable substance, material or product that contains nicotine, other than
11 cigarettes, ~~sixty~~ seventy-five percent of the invoice price;"

12 **Section 4. Amendment.** 3 CMC §2177 is hereby amended to read as
13 follows:

14 "(a) There shall be established a separate fund to be known as the Tobacco
15 Control Fund. There shall be credited to said fund ~~30% of the increase in~~ 45% of
16 the cigarette tax authorized under 4 CMC §1402(a)(16) and 4 CMC §1402(a)(17),
17 together with any penalties, forfeitures, interest, costs of suits and fines collected in
18 connection therewith, less all amounts refunded or abated in connection therewith,
19 all as determined by the Secretary of Finance based on professionally prepared,
20 written analyses; any appropriation, grant, gift, or other contribution explicitly
21 made to said fund; and any income derived from the investment of amounts credited

1 to said fund. Amounts credited to said fund shall be expended, subject to
2 appropriation by the Legislature to supplement other funding for the following
3 purposes:

4 (a~~1~~) for ~~Department of Public Health~~ Commonwealth Healthcare
5 Corporation activities relating to the monitoring of morbidity and
6 mortality ~~in the CNMI from cancer and other tobacco-related illnesses~~
7 ~~in the CNMI from illnesses which are caused or exacerbated by tobacco~~
8 use;

9 (b~~2~~) for the support of prenatal and maternal care programs, provided,
10 ~~however, that such prenatal and maternal care programs which~~
11 ~~incorporate smoking cessation assistance and guidance regarding the~~
12 ~~harmful effects of smoking on fetal development, and for programs~~
13 ~~designed to prevent or curb tobacco and betelnut use, prevent chronic~~
14 ~~disease, improve chronic disease management, and foster healthy~~
15 living;

16 (c~~3~~) for comprehensive school health education programs, ~~to be~~ which may
17 be administered jointly by the ~~Department of Public Health~~
18 Commonwealth Healthcare Corporation, and the Public School System,
19 and the Private School Coalition, relating to the hazards of tobacco use
20 by CNMI youth designed to prevent non-communicable disease and
21 related risk factors in youth; and

1 (d4) ~~for workplace-based and community smoking prevention and smoking~~
2 ~~cessation programs, for tobacco-related public service advertising and~~
3 ~~education programs, to be administered by the Department of Public~~
4 ~~Health; for targeted policy, systems and environmental changes that~~
5 ~~support healthy lifestyle behaviors for all people of the CNMI; and~~

6 (5) for data collection, research, monitoring, evaluation, and reporting on
7 tobacco use in the CNMI and the effectiveness of tobacco control policies and
8 programs.

9 ~~In conjunction with the preparation of the Commonwealth's comprehensive~~
10 ~~annual financial report, the Secretary of the Department of Public Health~~ The Chief
11 Executive Officer of the Commonwealth Healthcare Corporation shall prepare and
12 ~~issue to the Speaker of the House and the President of the Senate of the CNMI~~
13 Legislature an annual report detailing the revenues and expenditures of ~~said fund~~
14 the Tobacco Control Fund in accordance with generally accepted accounting
15 principles. The annual report shall also, at a minimum, report on the qualitative and
16 quantitative progress of programs and activities that receive funding from the
17 Tobacco Control Fund on the above purposes of the fund.

18 (b) There shall be established a separate fund to be known as the Tobacco
19 Enforcement Fund. There shall be credited to said fund 5% of the tax authorized
20 under 4 CMC §1402(a)(16) and 4 CMC §1402(a)(17), together with any penalties.
21 The Tobacco Enforcement Fund shall be divided between the Division of Customs

1 and the Division of Revenue and Taxation to be used for the implementation,
2 collection, and enforcement of taxes assessed on cigarettes and all other tobacco
3 products. The Division of Customs shall be allocated 3.5 percent and the Division
4 of Revenue and Taxation shall be allocated 1.5 percent."

5 **Section 5. Severability.** If any provision of this Act or the application of
6 any such provision to any person or circumstance should be held invalid by a court
7 of competent jurisdiction, the remainder of this Act or the application of its
8 provisions to persons or circumstances other than those to which it is held invalid
9 shall not be affected thereby.

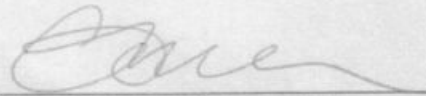
10 **Section 6. Savings Clause.** This Act and any repealer contained herein
11 shall not be construed as affecting any existing right acquired under contract or
12 acquired under statutes repealed or under any rule, regulation or order adopted
13 under the statutes. Repealers contained in this Act shall not affect any proceeding
14 instituted under or pursuant to prior law. The enactment of this Act shall not have
15 the effect of terminating, or in any way modifying, any liability civil or criminal,
16 which shall already be in existence at the date this Act becomes effective.

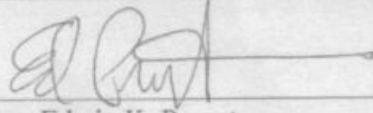
17 **Section 7. Effective Date.** This Act shall take effect upon its approval by
18 the Governor or upon its becoming law without such approval.

Prefiled: 4/20/2021

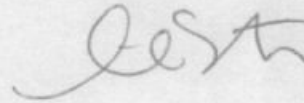
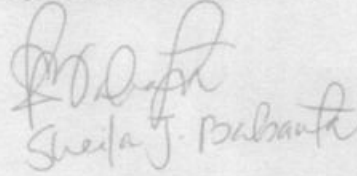
Date: 4/20/2021

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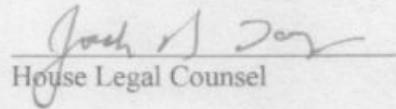

Rep. Christina Marie E. Sablan



Rep. Edwin K. Propst



Reviewed for Legal Sufficiency by:


House Legal Counsel