EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

July 12, 2006

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

Re: Senate Bill No. 2961 SD1 HD1 CD1

On July 11, 2006, Senate Bill No. 2961, entitled "A Bill for an Act Relating to Health" became law without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

This bill raises the tax on cigarettes and uses the monies derived from the tax increase to fund programs that promote health. This measure creates the Hawaii Cancer Research Special Fund and the Community Health Center Special Fund and exempts these funds, as well as the Emergency Medical Services Special Fund, from transfers for central service and administrative expenses.

This bill reflects an effort to deter smoking by incrementally increasing the Hawaii cigarette tax from the current rate of $1.40 per pack to $2.60 per pack over a period of five years. Unfortunately, Senate Bill No. 2961 contains several drafting errors.

In the sections which distribute the cigarette tax increase into the various special funds, Senate Bill No. 2961 omits some key language. This bill only appropriates between 0.25 cents and 2.0 cents into each of the designated special funds between September 30, 2006 and September 30, 2011. Other sections of the measure convey the intent of the Legislature was to deposit the amounts on a per cigarette basis but the bill was not drafted to state this clearly and unambiguously.

Second, the bill deleted language authorizing the Director of Finance to assess and collect central administrative fees on all special funds. According to conversations we have had with the Legislative Reference Bureau, they recognize this flaw in the bill and will correct it in their annual statute correction legislation next session.

Third, the newly established special funds do not meet the requirements of Section 37-52.3, HRS, which mandates that a special fund reflect "a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program, as opposed to serve primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget." There is no clear nexus between tobacco taxes and trauma care use and, thus, this portion of the bill does not meet the requisite statutory test.

I anticipate the Legislature will return next session prepared to introduce and pass a housekeeping measure to correct the mistakes evident in this bill.

For the foregoing reasons, I allowed Senate Bill No. 2961 to become law as Act 316 effective July 11, 2006 without my signature.

Sincerely,

LINDA LINGLE