

ARKANSAS TOBACCO CONTROL

Enabling Laws

Act 27 of 2010
A.C.A. §26-57-255 et seq.

History and Organization

The Arkansas Tobacco Control Board was created by Act 1337 of 1997 by the Legislature, who authorized an eight (8) member Board appointed by the Governor. The Board is constituted as follows: Two (2) members of the Board shall be tobacco products wholesalers; two (2) members shall be tobacco products retailers; and four (4) members shall be members of the public-at-large who are not public employees or officials, at least one of which shall be an African American, and two (2) of whom shall be selected from a list of at least eight (8) candidates supplied to the Governor by the Arkansas Medical Society. Our mission is to enforce the state laws and regulations pertaining to tobacco sales for the protection of the citizens of Arkansas.

The Board authorizes the issuance of permits for all retail, wholesale, and sales representatives dealing in cigarette or tobacco products in the State of Arkansas as well as ruling on applications to sell cigarettes with a lower than the statutorily presumed cost of doing business. The Board acts as a quasi-judicial body, sitting as both judge and jury in disciplinary proceedings against permit holders and other individuals who have been cited for violating Arkansas tobacco laws or regulations by the agency, Arkansas Tobacco Control (ATC). The Director of Arkansas Tobacco Control is appointed by, and serves at the pleasure of, the Governor.

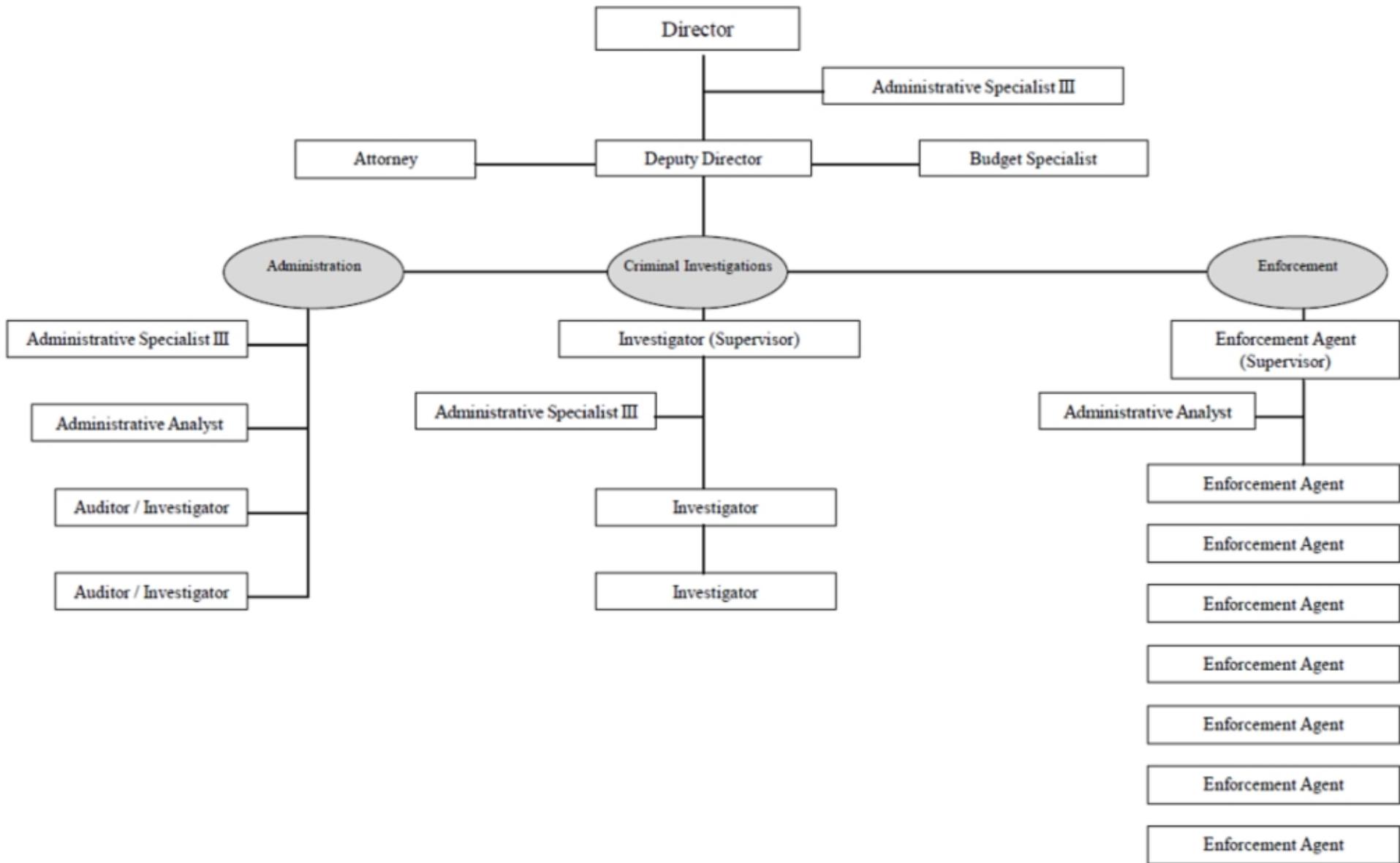
Under Act 1699 of 2001, the Director was authorized to appoint agents as specialized law enforcement officers for the purpose of conducting investigations pertaining to violations of tobacco laws in this state. On July 19, 2001, the Agency entered into a sub-recipient contractual agreement with the Arkansas Department of Health to receive monies from the Master Tobacco Settlement Fund for the enforcement of youth access laws.

ATC is tasked with enforcing the Board's regulations and all of Arkansas' tobacco laws. Designated as a law enforcement agency by Act 785 of 2009, ATC agents are law enforcement officers who can bring both administrative charges and initiate criminal investigations for violations of Arkansas' tobacco laws. Criminal offenses are then prosecuted by the local prosecuting attorney. Among the statutes enforced by ATC are: A.C.A. §26-57-213 Invoices, A.C.A. §26-57-214 Registration and licensing required prior to doing business, A.C.A. §26-57-219, Permits and licenses -- Annual privilege tax, A.C.A. §26-57-225 Failure to secure permit unlawful, A.C.A. §26-57-226 Sale, delivery, etc., without license - Penalty, A.C.A. §26-57-228 Purchases from unregistered, unlicensed dealers unlawful, A.C.A. §26-57-231 Failure to allow inspection

unlawful, A.C.A. §26-57-240 Counterfeiting of stamps unlawful - Penalty, A.C.A. §26-57-245 Unstamped products or products with unpaid taxes -- Purchase, sale, receipt, etc., a criminal offense, A.C.A. §26-57-262 Sale of export cigarettes, A.C.A. §26-57-1303 Certifications - Directory - Tax stamps, A.C.A. §26-57-1306 Penalties and other remedies, A.C.A. §5-27-227 Providing minors with tobacco products and cigarette papers - Purchase, use, or possession prohibited - Self-service displays prohibited - Placement of tobacco vending machines, A.C.A. §5-78-102 Confiscation of tobacco products authorized, A.C.A. §4-75-701 et seq. The Unfair Cigarette Sales Act. The ATC also works closely with other local, state and federal law enforcement agencies.

Act 697 of 2009, "An Act To Create The Arkansas Cigarette Fire Safety Standard Act; Concerning The Reduced Ignition Propensity Standards For Cigarettes Sold In The State Of Arkansas; To Create The Cigarette Fire Safety Standard Fund; And For Other Purposes" required that all cigarettes sold in Arkansas after January 1, 2010 to comply with the Act's reduced ignition propensity standards and added the enforcement A.C.A. §20-27-2101 et seq. The Act also placed the Cigarette Fire Safety Standard Fund under the ATC Director's control to support fire safety and prevention programs.

Act 939 of 2009, "An Act To Establish A Forfeiture Procedure For Tobacco Products; To Establish A Tobacco Control Fund; And For Other Purposes" in an effort to combat the growing problem of smuggled untaxed tobacco, created a forfeiture procedure modeled on Arkansas' drug forfeiture procedure, for use by local prosecuting attorneys and local and state law enforcement agencies to divest smugglers of property used to facilitate their illegal activities. Tobacco forfeitures are reported to the Director of Arkansas Tobacco Control who compiles same for



Agency Commentary

The Arkansas Tobacco Control Board was created by Act 1337 of 1997 to regulate any individual or entity, other than a manufacturer, who deals in cigarettes or other tobacco products in the State of Arkansas by ensuring that said individual or entity is duly permitted by Arkansas Tobacco Control, and that all individuals or entities that deal in cigarettes or tobacco in Arkansas comply with all the tobacco laws and regulations of the state.

This compliance includes but is not limited to ensuring that all tobacco products are purchased according to state statute and regulation, that no tobacco products are sold to anyone under age eighteen and that all tobacco products sold in Arkansas are legitimate products that have been handled, taxed, and in the case of cigarettes, priced in accordance with Arkansas law.

It is Arkansas Tobacco Control's mandate to investigate all violations of Arkansas tobacco law and as appropriate, to either prosecute said violations administratively before the Arkansas Tobacco Control Board or refer them to the appropriate prosecuting attorney's office for criminal prosecution. Currently, Arkansas Tobacco Control receives two revenue streams, an appropriation from General Revenue and funding from the Master Settlement Agreement's Tobacco Settlement Fund that is channeled through the Department of Health to Arkansas Tobacco Control as a fund transfer.

Funds Center 2EH - Sales to Minors Enforcement

Arkansas Tobacco Control - Enforcement Division requests appropriation in Char. 11, Capital Outlay, in the amount of \$86,000 in FY2012 and \$86,000 in FY2013. This appropriation will be to replace vehicles and covert camera systems.

Three (3) enforcement vehicles will need to be replaced in both years. These vehicles will range in mileage from 75,000 to 150,000 miles. Once a vehicle reaches the 75,000 mile mark or above, maintenance costs begin to rise making it cost prohibitive for the agency to retain. The sales tax costs will be \$6,000 each year for these purchases.

In addition, the Enforcement Division will need to replace two (2) covert camera systems each year to be used in undercover operations. These camera systems are used for both evidentiary purposes and officer safety. These four (4) camera systems will replace less capable systems that were purchased in FY2004.

Funds Center 983 - Operations

Arkansas Tobacco Control - Criminal Investigations Division (CID) requests appropriation in Char. 11, Capital Outlay, in the amount of \$10,000 in FY2012 and \$2,000 in FY2013. This appropriation will be to replace vehicles and to purchase a computerized polygraph machine.

CID will need to replace two (2) vehicles in FY2012 and one (1) vehicle in FY2013. This appropriation will be to pay sales tax for the replacement vehicles that will range in mileage from 75,000 to 150,000 miles. Appropriation for these vehicles will be provided by DF&A, and therefore is not included in this request.

In addition, CID request plans to purchase a computerized polygraph machine in FY2012 at a cost of \$6,000. This machine will be used in criminal investigations involving tobacco smuggling and other violations of Arkansas tobacco laws.

These increases will be offset with reductions in Enforcement Investigation Expenses, resulting in no additional general revenue funding.

NEW Funds Center 85C - ATC Cigarette Fire Safety

Arkansas Tobacco Control - The Arkansas Cigarette Fire Safety Standard Act (A.C.A. 20-27-2101) was established by Act 697 of 2009 to set ignition propensity standards for cigarettes sold in Arkansas to be uniform with other states that have enacted reduced cigarette ignition propensity laws. This appropriation is funded by special revenues from tri-annual cigarette certification fees paid by cigarette manufacturers as well as civil penalties. ATC requests to establish a new appropriation of \$50,000 for each year of the biennium for Fire Safety and Prevention programs pursuant to A.C.A. 19-6-811(c), which states "The fund shall be used by the Director of the Arkansas Tobacco Control to support fire safety and prevention programs."

Audit Findings

DIVISION OF LEGISLATIVE AUDIT
AUDIT OF :
ARKANSAS TOBACCO CONTROL BOARD
FOR THE YEAR ENDED JUNE 30, 2007

Findings

Review of credit card transactions revealed a total of \$626 in credit card charges that were not supported by adequate documentation as required by the State's Financial Management Guide. Failure to maintain supporting documentation could place assets at risk.

Recommendations

The Agency comply with policies and procedures set forth in the State's Financial Management Guide by maintaining supporting documentation for all credit card charges.

Employment Summary

	Male	Female	Total	%
White Employees	9	7	16	89 %
Black Employees	0	2	2	11 %
Other Racial Minorities	0	0	0	0 %
	Total Minorities		2	11 %
	Total Employees		18	100 %

Publications

A.C.A. 25-1-204

Name	Statutory Authorization	Required for		# of Copies	Reason(s) for Continued Publication and Distribution
		Governor	General Assembly		
None	N/A	N	N	0	N/A

Department Appropriation Summary

Historical Data

Agency Request and Executive Recommendation

Appropriation	2009-2010		2010-2011		2010-2011		2011-2012						2012-2013					
	Actual	Pos	Budget	Pos	Authorized	Pos	Base Level	Pos	Agency	Pos	Executive	Pos	Base Level	Pos	Agency	Pos	Executive	Pos
2EH Sales to Minors Enforcement - Cash	1,003,559	13	983,336	13	1,051,957	13	948,382	13	1,034,382	13	1,034,382	13	948,382	13	1,034,382	13	1,034,382	13
85C ATC Cigarette Fire Safety	0	0	0	0	0	0	0	0	50,000	0	50,000	0	0	0	50,000	0	50,000	0
983 Tobacco Control Board Operations	622,512	6	877,425	9	901,924	9	875,129	9	875,129	9	875,129	9	875,129	9	875,129	9	875,129	9
Total	1,626,071	19	1,860,761	22	1,953,881	22	1,823,511	22	1,959,511	22	1,959,511	22	1,823,511	22	1,959,511	22	1,959,511	22

Funding Sources		%		%		%		%		%		%		%		%		%
Fund Balance	4000005	101,372	5.7	154,863	8.1		43,527	2.3	43,527	2.2	43,527	2.2	86,000	4.3	0	0.0	0	0.0
General Revenue	4000010	622,512	35.0	877,425	46.1		875,129	45.8	875,129	44.7	875,129	44.7	875,129	43.9	875,129	44.7	875,129	44.7
Special Revenue	4000030	0	0.0	0	0.0		0	0.0	50,000	2.6	50,000	2.6	0	0.0	50,000	2.6	50,000	2.6
Cash Fund	4000045	1,057,050	59.4	872,000	45.8		990,855	51.9	990,855	50.6	990,855	50.6	1,034,382	51.8	1,034,382	52.8	1,034,382	52.8
Total Funds		1,780,934	100.0	1,904,288	100.0		1,909,511	100.0	1,959,511	100.0	1,959,511	100.0	1,995,511	100.0	1,959,511	100.0	1,959,511	100.0
Excess Appropriation/(Funding)		(154,863)		(43,527)			(86,000)		0		0		(172,000)		0		0	
Grand Total		1,626,071		1,860,761			1,823,511		1,959,511		1,959,511		1,823,511		1,959,511		1,959,511	

Agency Position Usage Report

FY2008 - 2009						FY2009 - 2010						FY2010 - 2011					
Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused
	Filled	Unfilled	Total	Total			Filled	Unfilled	Total	Total			Filled	Unfilled	Total	Total	
18	18	0	18	0	0.00 %	22	18	4	22	0	18.18 %	22	18	4	22	0	18.18 %

Analysis of Budget Request

Appropriation: 2EH - Sales to Minors Enforcement - Cash

Funding Sources: NTC - Cash in Treasury

Arkansas Tobacco Control administers the Sales to Minors program. This program is responsible for executing the sales to minors checks and enforcing any violations that result from these checks. Funding for this program is made available through a grant from the Arkansas Department of Health using Master Tobacco Settlement funds.

Base Level salaries and matching do not include appropriation for a Cost of Living Adjustment or Career Service Payments.

The Agency's Change Level Request for \$86,000 in Capital Outlay each year will provide for replacement of three (3) vehicles each year (all over 75,000 miles) with associated sales tax and to replace two (2) covert camera systems each year which were purchased in 2004 (\$10,000 per system).

The Executive Recommendation provides for the Agency Request. Replacement of aging, high mileage vehicles will be determined in accordance with A.C.A. §22-8-201 et seq., Automobile and Pickup Truck Acquisition Act, which establishes guidelines for automobile replacement. Expenditure of appropriation is contingent upon available funding.

Appropriation Summary

Appropriation: 2EH - Sales to Minors Enforcement - Cash

Funding Sources: NTC - Cash in Treasury

Historical Data

Agency Request and Executive Recommendation

Commitment Item		Historical Data			Agency Request and Executive Recommendation			Agency Request and Executive Recommendation		
		2009-2010 Actual	2010-2011 Budget	2010-2011 Authorized	2011-2012			2012-2013		
					Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	493,392	499,922	483,528	497,422	497,422	497,422	497,422	497,422	497,422
#Positions		13	13	13	13	13	13	13	13	13
Personal Services Matching	5010003	153,636	161,374	158,944	161,170	161,170	161,170	161,170	161,170	161,170
Operating Expenses	5020002	242,217	244,285	310,808	244,285	244,285	244,285	244,285	244,285	244,285
Conference & Travel Expenses	5050009	4,198	8,005	19,495	8,005	8,005	8,005	8,005	8,005	8,005
Professional Fees	5060010	21,120	37,500	46,932	37,500	37,500	37,500	37,500	37,500	37,500
Data Processing	5090012	0	0	0	0	0	0	0	0	0
Capital Outlay	5120011	88,996	32,250	32,250	0	86,000	86,000	0	86,000	86,000
Total		1,003,559	983,336	1,051,957	948,382	1,034,382	1,034,382	948,382	1,034,382	1,034,382
Funding Sources										
Fund Balance	4000005	101,372	154,863		43,527	43,527	43,527	86,000	0	0
Cash Fund	4000045	1,057,050	872,000		990,855	990,855	990,855	1,034,382	1,034,382	1,034,382
Total Funding		1,158,422	1,026,863		1,034,382	1,034,382	1,034,382	1,120,382	1,034,382	1,034,382
Excess Appropriation/(Funding)		(154,863)	(43,527)		(86,000)	0	0	(172,000)	0	0
Grand Total		1,003,559	983,336		948,382	1,034,382	1,034,382	948,382	1,034,382	1,034,382

The FY11 Budget amount in Regular Salaries and Personal Services Matching exceeds the authorized amount due to salary and matching rate adjustments during the 2009-2011 biennium.

Change Level by Appropriation

Appropriation: 2EH - Sales to Minors Enforcement - Cash
Funding Sources: NTC - Cash in Treasury

Agency Request

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
BL	Base Level	948,382	13	948,382	100.0	948,382	13	948,382	100.0
C01	Existing Program	86,000	0	1,034,382	109.1	86,000	0	1,034,382	109.1

Executive Recommendation

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
BL	Base Level	948,382	13	948,382	100.0	948,382	13	948,382	100.0
C01	Existing Program	86,000	0	1,034,382	109.1	86,000	0	1,034,382	109.1

Justification

C01	The Agency will have six (6) vehicles over 75,000 miles and maintenance is cost prohibitive for the Agency. We plan to replace three (3) of these vehicles in FY2012 (\$60,000 - Vehicles; \$6,000 - Sales Tax) and three (3) in FY2013 (\$60,000 - Vehicles; \$6,000 - Sales Tax) . In addition, the Agency needs to replace four (4) covert camera systems that were purchased in FY2004. We plan to replace two (2) of these camera systems in FY2012 (\$20,000) and two (2) in FY2013 (\$20,000).
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Analysis of Budget Request

Appropriation: 85C - ATC Cigarette Fire Safety

Funding Sources: SFS - Cigarette Fire Safety Standard Fund

The Arkansas Cigarette Fire Safety Standard Act (A.C.A. 20-27-2101) was established by Act 697 of 2009 to set ignition propensity standards for cigarettes sold in Arkansas to be uniform with other states with enacted reduced cigarette ignition propensity laws. This appropriation is funded by special revenues from cigarette certification fees and civil penalties.

The Agency's Change Level Request provides to establish a new appropriation of \$50,000 each year for Fire Safety and Prevention programs pursuant to A.C.A. 19-6-811(c), which states "The fund shall be used by the Director of Arkansas Tobacco Control to support fire safety and prevention programs."

The Executive Recommendation provides for the Agency Request.

Appropriation Summary

Appropriation: 85C - ATC Cigarette Fire Safety

Funding Sources: SFS - Cigarette Fire Safety Standard Fund

Historical Data

Agency Request and Executive Recommendation

Commitment Item	2009-2010	2010-2011	2010-2011	2011-2012			2012-2013		
	Actual	Budget	Authorized	Base Level	Agency	Executive	Base Level	Agency	Executive
Fire Safety & Prevention 5900046	0	0	0	0	50,000	50,000	0	50,000	50,000
Total	0	0	0	0	50,000	50,000	0	50,000	50,000
Funding Sources									
Special Revenue 4000030	0	0		0	50,000	50,000	0	50,000	50,000
Total Funding	0	0		0	50,000	50,000	0	50,000	50,000
Excess Appropriation/(Funding)	0	0		0	0	0	0	0	0
Grand Total	0	0		0	50,000	50,000	0	50,000	50,000

Change Level by Appropriation

Appropriation: 85C - ATC Cigarette Fire Safety
Funding Sources: SFS - Cigarette Fire Safety Standard Fund

Agency Request

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
C02	New Program	50,000	0	50,000	100.0	50,000	0	50,000	100.0

Executive Recommendation

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
C02	New Program	50,000	0	50,000	100.0	50,000	0	50,000	100.0

Justification

C02	The Board requests a new appropriation of \$50,000 each year for Fire Safety and Prevention programs as provided for by Act 697 of 2009.								
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Analysis of Budget Request

Appropriation: 983 - Tobacco Control Board Operations

Funding Sources: HUA - Miscellaneous Agencies Fund

Arkansas Tobacco Control was established by Act 1337 of 1997 to regulate and issue permits and licenses to any person (except manufacturers) handling, receiving, processing, storing, distributing, taking orders for, soliciting orders of, selling, offering for sale or dealing in, through sale, barter or exchange, any cigarettes or other tobacco products in the State of Arkansas. This appropriation is funded by general revenues.

Base Level salaries and matching do not include appropriation for a Cost of Living Adjustment or Career Service Payments.

The Agency Request provides for Base Level for the 2011-2013 biennium, with a request to reallocate \$10,000 in FY2012 and \$2,000 in FY2013 from Operating Expenses to Capital Outlay to purchase a computerized polygraph machine in FY2012 and to pay associated sales tax to replace two (2) vehicles in FY2012 and one (1) vehicle in FY2013. Since this appropriation is funded from general revenues, appropriation and funding for purchase of these vehicles, if approved, would be provided through a transfer from the DFA Motor Vehicle Transfer Account.

The Executive Recommendation provides for Base Level, with a reallocation of \$4,000 in FY2012 and \$2,000 in FY2013 from Operating Expenses to Capital Outlay for sales tax to replace aging, high mileage vehicles in accordance with A.C.A. §22-8-201 et seq., Automobile and Pickup Truck Acquisition Act, which establishes guidelines for automobile replacement.

Appropriation Summary

Appropriation: 983 - Tobacco Control Board Operations

Funding Sources: HUA - Miscellaneous Agencies Fund

Historical Data

Agency Request and Executive Recommendation

Commitment Item	2009-2010 Actual	2010-2011 Budget	2010-2011 Authorized	2011-2012			2012-2013		
				Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries 5010000	266,649	378,956	376,758	376,856	376,856	376,856	376,856	376,856	376,856
#Positions	6	9	9	9	9	9	9	9	9
Personal Services Matching 5010003	92,228	118,328	117,569	118,132	118,132	118,132	118,132	118,132	118,132
Operating Expenses 5020002	115,829	360,141	387,597	360,141	350,141	356,141	360,141	358,141	358,141
Conference & Travel Expenses 5050009	1,972	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Professional Fees 5060010	1,245	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Data Processing 5090012	0	0	0	0	0	0	0	0	0
Capital Outlay 5120011	144,589	0	0	0	10,000	4,000	0	2,000	2,000
Total	622,512	877,425	901,924	875,129	875,129	875,129	875,129	875,129	875,129
Funding Sources									
General Revenue 4000010	622,512	877,425		875,129	875,129	875,129	875,129	875,129	875,129
Total Funding	622,512	877,425		875,129	875,129	875,129	875,129	875,129	875,129
Excess Appropriation/(Funding)	0	0		0	0	0	0	0	0
Grand Total	622,512	877,425		875,129	875,129	875,129	875,129	875,129	875,129

The FY11 Budget amount in Regular Salaries and Personal Services Matching exceeds the authorized amount due to salary and matching rate adjustments during the 2009-2011 biennium.

Change Level by Appropriation

Appropriation: 983 - Tobacco Control Board Operations
Funding Sources: HUA - Miscellaneous Agencies Fund

Agency Request

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
BL	Base Level	875,129	9	875,129	100.0	875,129	9	875,129	100.0
C04	Reallocation	0	0	875,129	100.0	0	0	875,129	100.0

Executive Recommendation

Change Level		2011-2012	Pos	Cumulative	% of BL	2012-2013	Pos	Cumulative	% of BL
BL	Base Level	875,129	9	875,129	100.0	875,129	9	875,129	100.0
C04	Reallocation	0	0	875,129	100.0	0	0	875,129	100.0

Justification

C04	The Agency will have three (3) vehicles with over 75,000 miles and maintenance cost is prohibitive for the Agency. We plan to replace two (2) of these vehicles in FY2012 (\$4,000 - Sales Tax) and one (1) in FY2013 (\$2,000 - Sales Tax). In 2012 CID plans to purchase a computerized polygraph machine to be used in criminal investigations (\$6,000). These increases will be offset in Enforcement Investigation Expenses, resulting in no increase in general revenue funding.
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