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JANE BRUNNER
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To: President Reid and Members of the Rules Committee
From: Councilmember Brunner
Date: February 2nd, 2012
Re: Support for the California Cancer Research Act

The California Cancer Research Act (CCRA) is a qualified ballot initiative that will be placed before voters in the next statewide election. Through a \$1 per-pack tax on cigarettes, the CCRA would deliver over \$855 million per year to pursue potential cures of cancers and other tobacco-attributed diseases including Heart Disease, drive down smoking rates by investing in proven smoking cessation and tobacco control efforts, and assist tobacco law enforcement. A breakdown of the funds is below:

- 60% will fund cancer and other smoking-related research (\$468 million)
- 20% will fund tobacco use prevention and smoking cessation (\$156 million)
- 15% will pay for facilities and equipment to support research (\$117 million)
- 3% will help enforce anti-tobacco laws and stop tobacco smuggling (\$23 million)
- 2% is the maximum amount used for administering the program

A nine-member oversight committee of cancer center directors, University of California chancellors, and representatives of disease advocacy organizations will award all funds.

The legislation and analysis by the Legislative Analyst's Office are attached.

Partial List of Supporters

The University of California

Honorable Gavin Newsom, Lieutenant-Governor of California

Honorable Tom Torlakson, California State Superintendent of Public Instruction

Sheila Jordan, Superintendent of Schools: Alameda County

John Rizzo, Board President: City College of San Francisco

Loma Linda University Adventist Health Sciences

Board of Trustees, Placer-Union High School District

Board of Trustees, Ceres Unified School District

Ron Mooney, Board President: Alameda Unified School District

Pamela Mirabella, Board President: Contra Costa County Board of Education

Shayne Silva, Board President: Lafayette School District

Cheryl Webb, Board Vice-President: Emery Unified School District

Ellen Elster, Board Member: Contra Costa County Board of Education

Sean Kennedy, Board Member: Dublin Unified School District

Teresa Gerringer, Board Member: Lafayette School District

Christopher Dobbins, Board Member: Oakland Unified School District

Noel Gallo, Board Member: Oakland Unified School District

Tom Ford, Board Member: Rincon Valley Unified School District

Dr. Emily Murase, Board Member: San Francisco Unified School District

Christopher Dobbins, Board Member: Oakland Unified School District

First 5 Los Angeles

First 5 Riverside

First 5 Alameda County

First 5 Solano

First 5 Merced

First 5 Placer

First 5 Mendocino

First 5 Siskiyou

First 5 Calaveras

First 5 Mariposa

American Cancer Society

Livestrong – Lance Armstrong Foundation

Stand Up to Cancer

American Heart Association

American Lung Association in California

American Stroke Association

Susan G. Komen for the Cure, California Affiliate Collaborative

Lance Armstrong - cyclist; 7-times Tour de France champion

Campaign for Tobacco Free Kids

Americans for Nonsmokers' Rights

Public Health Institute

Health and Social Policy Institute

Lung Cancer Alliance

California Primary Care Association

Partial List of Supporters continued

Health Officers Association of California
Breathe California
Tobacco Education and Research Oversight Committee
Cancer Prevention Institute of California
California Colorectal Cancer Coalition (C4)
Network for a Healthy California
Cancer Legal Resource Center
Association of Northern California Oncologists
Community Health Systems Inc.
Bay Area Breast Surgeons, Inc.
San Francisco County Medical Association
Tulare County Medical Association
Humboldt-Del Norte County Medical Society
Riverside County Family Care Centers
Children's Hospital & Research Center, Oakland CA
St Joseph's Medical Center, Stockton CA
St. Theresa Comprehensive Cancer Center, Stockton CA
St Mary's Medical Center, Long Beach CA
San Joaquin Pharmacist Association
San Francisco Women's Health Inc
Leukemia and Lymphoma Society of Silicon Valley and Monterey Bay
Integrative Radiation Oncology Medical Associates
Fresno Public Health Department Tobacco Prevention Program
San Joaquin County STOPP Coalition

Known Opposition

Philip Morris USA (and a tobacco-funded Political Action Committee)

12/7/2009

The people of the State of California do enact as follows:

HOPE 2010: THE CALIFORNIA CANCER RESEARCH ACT

SECTION 1. Findings and Declarations

- (a) Despite continuing advancements in medical treatment and prevention, cancer remains a leading cause of death in California, responsible for nearly one in every four deaths each year.
- (b) Medical experts expect more than 140,000 Californians to be diagnosed with cancer each year.
- (c) Cigarette smoking and other uses of tobacco remain the leading causes of cancer in California, as well as many other serious health problems, including cardiovascular disease, emphysema and other chronic illnesses.
- (d) The treatment of tobacco-related diseases continue to impose a significant burden upon California's overstressed health care system. Tobacco use costs Californians billions of dollars a year in medical expenses and lost productivity.
- (e) Given the urgent need for new and effective treatments for cancer and other tobacco-related illnesses, tobacco tax revenues are an appropriate source of funds for research into the causes, early detection, and effective treatment, care, prevention, and potential cures of lung cancer and other types of cancer, cardiovascular disease, emphysema and other chronic diseases and to provide facilities for such research.
- (f) **HOPE 2010: The California Cancer Research Act** will provide an ongoing source of funds to allow California's leading researchers to advance human understanding and knowledge about the causes, early detection, effective treatment, care, prevention and potential cures for cancer and other tobacco-related illnesses.
- (g) Tobacco tax increases are an appropriate way to fund efforts to prevent and reduce tobacco-caused cancers and other diseases because increasing tobacco product prices directly reduces smoking and other tobacco uses.
- (h) In order to control cancer, sustained support for cancer research is paramount and must include all phases of cancer research, from basic and applied research to that which transfers technology from academic institutions and laboratories to use by medical providers and consumers.

SECTION 2. Statement of Purpose

The purpose of this measure is to increase the tax on tobacco to fund the following:

- (1) Grants and loans for biomedical, epidemiological, behavioral, health services, and other research in California to enhance the state of medical knowledge regarding lung cancer and other types of cancer, cardiovascular disease, emphysema and other tobacco-related illnesses.
- (2) Creation, staffing and equipping of California research facilities engaged in biomedical, epidemiological, behavioral, health services, and other research whose primary focus is to identify and refine promising prevention, early detection, treatments, complementary treatments and potential cures of lung cancer and other types of cancer, cardiovascular disease, emphysema and other tobacco-related diseases.
- (3) Increased efforts to reduce tobacco use in the State and prevent children from becoming addicted users.

SECTION 3. HOPE 2010: California Cancer Research Act

Article 2.5 (commencing with Section 30130.50) is added to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

§ 30130.50. HOPE 2010 Cancer Research Cigarette Excise Tax

- (a) *In addition to any other tax imposed under this part, a separate excise tax is hereby imposed upon every distributor of cigarettes upon the distribution of cigarettes at the rate of fifty mills (\$0.050) for each cigarette distributed on and after the first day of the first calendar quarter commencing more than 90 days after the effective date of this section.*
- (b)
 - (1) *In addition to any other tax imposed under this part, every dealer and wholesaler, for the privilege of holding or storing cigarettes for sale, use, or consumption, shall pay a floor stock tax for each cigarette in his or her possession or under his or her control in this state at 12:01 a.m. on the first day of the first calendar quarter commencing more than 90 days after the effective date of this section at the rate of fifty mills (\$0.050) for each cigarette.*
 - (2) *Every dealer and wholesaler shall file a return with the State Board of Equalization on or before the first day of the first calendar quarter commencing more than 180 days after the effective date of this section on a form prescribed by the board, showing the number of cigarettes in*

his or her possession or under his or her control at 12:01 a.m. on the first day of the first calendar quarter commencing more than 90 days after the effective date of this section. The amount of tax shall be computed and shown on the return.

- (c) *Notwithstanding any other provisions of law, the tax created by the HOPE: 2010 Cancer Research Act and the revenue derived there from, including investment interest, shall be considered trust funds, to be expended solely for the purposes set forth in this Act and shall not be considered to be part of the General Fund, as that term used in Chapter 1, Part 2, Division 4 of the Government Code, commencing with Section 16300, and shall not be considered General Fund revenue for purposes of Section 8 of Article XVI of the California Constitution, and its implementing statutes.*

§ 30130.51. Definitions

For the purposes of this article:

- (a) *“Cigarette” has the same meaning as that in Section 30003, as it read on January 1, 2009.*
- (b) *“Tobacco products” includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50 percent, tobacco, but does not include cigarettes.*

§ 30130.52. Effect on Tobacco Consumption and Tax Revenue

- (a) *The State Board of Equalization shall determine within one year of the operative date of this article, and annually thereafter, the effect that the additional tax imposed on cigarettes by this article, and the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, have on the consumption of cigarettes and tobacco products in this state. To the extent that a decrease in consumption is determined by the State Board of Equalization to be a direct result of the additional tax imposed by this article, or the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, the State Board of Equalization shall determine the fiscal effect the decrease in consumption has on the Cigarette and Tobacco Products Surtax Fund created by Section 30122 (Proposition 99 as approved by the voters at the November 8, 1988, statewide general election), the Breast Cancer Fund created by Section 30461.6, the California Children and Families Trust Fund created by Section 30131 (Proposition 10 as approved by the voters at the November 3, 1998 statewide general election), and the portion of the General Fund created by Section 30101.*
- (b) *The State Controller shall transfer funds from the California Cancer*

Research Life Sciences Innovation Trust Fund to the Cigarette and Tobacco Products Surtax Fund, the Breast Cancer Fund, the California Children and Families Trust Fund, and the General Fund, to offset the revenue decrease directly resulting from imposition of additional taxes by this article.

§ 30130.53 HOPE 2010 Funds

- (a) *The California Cancer Research Life Sciences Innovation Trust Fund, and within that Fund, the Hope 2010 Research Fund, the Hope 2010 Facilities Fund, the Hope 2010 Tobacco Prevention and Cessation Fund, the Hope 2010 Law Enforcement Fund, and the HOPE 2010 Committee Account, are hereby established in the Treasury of the State of California.*
- (b) *Notwithstanding any other provision of law, the California Cancer Research Life Sciences Innovation Trust Fund and all funds, sub-funds or sub-accounts of that Fund, are trust funds established solely to carry out the purposes of this Act.*
- (c) *All revenues from the excise and floor stock tax received by the State of California, or State Officials, pursuant to the provisions of this Act, shall be deposited into the California Cancer Research Life Sciences Innovation Trust Fund.*
- (d) *Revenue deposited into the California Cancer Research Life Sciences Innovation Trust Fund shall be deposited and apportioned as follows:*
 - (1) *Sixty percent (60%) shall be deposited into the HOPE 2010 Research Fund for the purpose of grants and loans to support research into the prevention, early detection, treatments, complementary treatments and potential cures of lung cancer and other types of cancer, cardiovascular disease, emphysema and other tobacco-related diseases, including but not limited to coronary heart disease, cerebrovascular disease, and chronic obstructive lung disease, which shall be awarded on the basis of scientific merit as determined by an open, competitive peer review process that assures objectivity, consistency, and high quality. All qualified investigators, regardless of institutional affiliation, shall have equal access and opportunity to compete for the funds in this Act. The peer review process for the selection of grants awarded under this program shall be modeled on the process used by the National Institutes of Health in its grant-making process.*
 - (2) *Fifteen percent (15%) shall be deposited into the HOPE 2010 Facilities Fund for the purposes of grants and loans to provide facilities, including but not limited to those buildings, building leases and capital equipment as may be found necessary and appropriate by*

the Committee, to further biomedical, epidemiological, behavioral, health services, and other research whose primary focus is to identify and refine promising prevention, early detection, treatments, complementary treatments, rehabilitation and potential cures of lung cancer and other types of cancer, cardiovascular disease, emphysema and other tobacco-related diseases, subject to the authority of the Committee to redirect surplus funds, as provided in this Act.

- (3) Twenty percent (20%) shall be deposited into the HOPE 2010 Tobacco Prevention and Cessation Fund for carrying out comprehensive tobacco prevention and control programs, and apportioned in the following manner:*

(A) Eighty percent (80%) of the HOPE 2010 Tobacco Prevention and Cessation Fund shall be allocated to the California Department of Public Health Tobacco Control Program to support the tobacco control programs described beginning at Section 104375 of the Health and Safety Code.

(B) Twenty percent (20%) of the HOPE 2010 Tobacco Prevention and Cessation Fund shall be allocated to the California Department of Education for programs to prevent and reduce the use of tobacco products as described in Section 104420 of the Health and Safety Code.

- (4) Three percent (3%) shall be deposited into the HOPE 2010 Law Enforcement Fund to support law enforcement efforts to reduce cigarette smuggling, tobacco tax evasion, and counterfeit tobacco products, to reduce illegal sales of tobacco products to minors, and to enforce legal settlement provisions and conduct law enforcement training and technical assistance activities for tobacco-related statutes, and apportioned in the following manner:*

(A) Forty percent (40%) of the HOPE 2010 Law Enforcement Fund to the State Board of Equalization to be used to enforce laws that regulate the distribution and retail sale of cigarettes and other tobacco products, such as laws that prohibit untaxed cigarette and tobacco product smuggling and counterfeiting and sales of cigarettes and other tobacco products without a proper license.

(B) Forty percent (40%) of the HOPE 2010 Law Enforcement Fund to the State Department of Public Health to be used to support programs, including, but not limited to, providing grants to local law enforcement agencies to provide training and funding for the enforcement of state and local laws related to the illegal sales of tobacco to minors, increasing investigative activities, and compliance checks, and other appropriate activities to reduce illegal

sales of tobacco products to minors , including, but not limited to the Stop Tobacco Access to Kids Enforcement (STAKE) Act, pursuant to Section 22952 of the Business and Professions Code.

(C) Twenty percent (20%) of the HOPE 2010 Law Enforcement Fund to the Attorney General to be used for activities including, but not limited to, enforcing laws that regulate the distribution and sale of cigarettes and other tobacco products, such as laws that prohibit cigarette smuggling, counterfeiting, selling untaxed tobacco, selling tobacco without a proper license and selling tobacco to minors, and enforcing tobacco-related laws, court judgments, and settlements.

(5) Two percent (2%) shall be deposited into a HOPE 2010 Committee Account which may be used by the Committee and the State Board of Equalization for the costs and expenses of administering this Act.

(e) Funds deposited into the California Cancer Research Life Sciences Innovation Trust Fund or any sub-fund or sub-account of that Fund, may be placed into the Pooled Money Investment Account for investment only, and interest earned shall be credited to the Fund and deposited, apportioned and expended only in accordance with the provisions of this Act and its purposes.

(f) Funds deposited into the California Cancer Research Life Sciences Innovation Trust Fund, together with interest earned by the Fund or any sub-fund, are hereby continuously appropriated for the purposes of this Act without regard to fiscal year, and shall be used solely for the purposes of this Act and shall not be subject to appropriation, reversion or transfer by the Legislature, the Governor or the Director of Finance for any other purpose and may not be loaned to the General Fund, or any other fund, for any purpose.

§30130.54 HOPE 2010 Cancer Research Citizens Oversight Committee

(a) There is hereby created within the Government of the State of California, the HOPE 2010 Cancer Research Citizens Oversight Committee. All references in this Act to the "Committee" are to the HOPE 2010 Cancer Research Citizens Oversight Committee. The Committee shall consist of nine members, appointed as follows:

(1) Four members appointed by the Governor, as follows:

(A) One member affiliated with a California Academic Medical Center who is a practicing physician with expertise in the prevention, treatment or research of cardiovascular disease.

(B) Three members selected from among the Cancer Center

Directors of National Cancer Institute designated cancer centers located within the State of California. Each Director may designate a person to attend meetings of the Committee in their place, so long as that person is employed at their respective center and that employment provides background and experience in cancer treatment.

- (2) The Chancellor from each of the campuses of the University of California which is a member of the California Institute for Quantitative Biological Research. Each Chancellor may designate a person to attend meetings of the Committee in their place, so long as that person is employed at their respective campus and that employment provides background and experience in quantitative bioscience.*
- (3) Two appointed by the Director of the California Department of Public Health, the appointments to be selected from among California representatives of California or national disease advocacy groups whose focus is tobacco-related illness, at least one of whom shall be a person who has been treated for a tobacco-related illness.*
- (4) No person who is required to register as a lobbyist under the provisions of any law of the United States, the State of California or any local government, is eligible for appointment to the Committee. A member of the Committee who registers with any governmental entity as a lobbyist is deemed to have resigned from the Committee and his or her office is deemed vacant as of the date of registration as a lobbyist.*
- (5) Notwithstanding any other provision of law, no member of the Committee, or those persons appointed by Committee members to attend meetings on their behalf, shall be an officer, employee, director, independent contractor, or grant recipient of any company or other business engaged in the manufacture, marketing, distribution, or sale of tobacco products, or have received any grants or payments for services of any kind from any such company or business during the past two years.*
- (6) The terms of office for appointed members shall commence on the effective date of this Act and continue for four years, except that the initial appointment of two members by the Governor and one member by the Public Health Director shall be for two year terms which shall expire two years after the effective date of this Act.*
- (7) Except for vacancies that occur as set forth in subdivision (a)(4) of this section, members appointed for a term shall continue to serve until their replacement is selected. If a vacancy occurs within a term, the appointing authority shall appoint a replacement member to serve the*

remainder of the term within 30 days of the date of the vacancy.

- (b) The members, by majority vote, shall annually select one of their number to serve as chair of the Committee and preside over its meetings and perform such other duties as may be delegated by the Committee.*
- (c) Except for those members who are also public officers or employees, the members of the Committee shall receive \$100 per day for each day occupied with attendance at public meetings of the Committee and reimbursement for their usual and ordinary expenses, as provided by the general law. Members of the Committee who are public officers or employees shall not be otherwise compensated for their service on the Committee.*
- (d) The Committee is vested with the power and authority to do all of the following:*
 - (1) Oversee the operations of the California Cancer Research Life Sciences Innovation Trust Fund and its sub-funds and sub-accounts and to act as trustee of the trust funds created by this Act.*
 - (2) Appoint a Chief Executive Officer who shall be exempt from the civil service pursuant to Article VII, Section 4 of the California Constitution. The Chief Executive Officer shall have the power to appoint such employees as are necessary for the administration of the Fund and the performance of those duties imposed upon the Committee by law, except that, notwithstanding any other provisions of law, no officer or employee of the Committee shall be an officer, employee, director, independent contractor, or grant recipient of any company or other business engaged in the manufacture, marketing, distribution, or sale of tobacco products, or have received any grants or payments for services of any kind from any such company or business during the past two years.*
 - (3) Establish such sub-funds and sub-accounts within the California Cancer Research and Life Sciences Innovation Fund, and apportion money in the Fund into such sub-funds and sub-accounts, as is found necessary and appropriate for administration of this Act.*
 - (4) Establish a process for soliciting, reviewing, and awarding grants and loans for research, facilities and patient treatment.*
 - (5) Establish and appoint such committees and advisory bodies as it deems necessary and appropriate to carry out its duties.*
 - (6) Develop annual and long-term strategic research and financial plans for the Fund, including an annual budget for administration of this Act.*

- (7) *Make final decisions on the award of loans and grants, and to revoke or rescind loans and grants which do not conform to approved research standards. Employ auditors to prepare an annual financial audit of the Fund's operations.*
- (8) *Issue, at least annually, public reports on the activities of the Committee and the Fund.*
- (9) *Establish policies regarding intellectual property rights arising from research funded by the Committee, which shall be consistent with those implemented by the University of California.*
- (10) *Establish rules and guidelines for the operation of the Fund and its employees.*
- (11) *Periodically review the income and expenditures of the HOPE 2010 Facilities Fund. If the Committee determines that there is a surplus in the Fund it may redirect money in that Fund to the HOPE 2010 Research Fund, the HOPE 2010 Tobacco Prevention and Cessation Fund, or the HOPE 2010 Law Enforcement Fund in the amounts and for the period determined by the Committee*
- (12) *Reimburse the State Board of Equalization for the cost of services required by this Act.*
- (13) *The following activities are inconsistent, incompatible or in conflict with the duties of members of the Committee or its officers or employees:*
 - (A) *Using the prestige or influence of the State or the Committee for the officer's or employee's private gain or advantage or the private gain of another*
 - (B) *Using state time, facilities, equipment, or supplies for private gain or advantage.*
 - (C) *Using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.*
 - (D) *Receiving or accepting money or any other consideration from anyone other than the State for the performance of his or her duties as a state officer or employee.*

- (E) *Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.*
- (F) *Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.*
- (G) *Subject to any other laws, rules, or regulations as pertain thereto, not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.*

Pursuant to Section 19990 of the Government Code, The Committee shall adopt rules governing the application of this subdivision, including a provision to provide notice of its requirements to all officers and employees.

- (14) *Adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this chapter, and to govern the procedures of the Committee, in accordance with the provisions of the Administrative Procedures Act (Article 6 (Commencing with Section 11340), Chapter 3.5, Part 1, Division 3, Title 2, of the Government Code).*
- (15) *Perform all other acts necessary or appropriate in the exercise of its power, authority, and jurisdiction.*

(f) Meetings

The Committee, and all subcommittees and advisory bodies created by it, are a "state body" as that term is used in Government Code Section 11121 and all meetings of the Committee, its subcommittees and advisory bodies, shall conform to the provisions of the Bagley-Keene Open Meeting Act (Article 9, commencing with Section 11120, Chapter 1, Part 1, Division 3, Title 2 of the Government Code).

(g) *Records*

All records of the Committee shall be public records as those terms are defined in the California Public Records Act (Article I (commencing with Section 6250), Chapter 3.5, Division 7, Title I of the Government Code) and may only be withheld from public disclosure in accordance with the provisions of that Act.

(h) *Conflicts of Interest*

- (1) Notwithstanding any other provision of law, no member of the Committee, or those persons appointed by Committee members to attend meetings on their behalf, or those officers or employees employed by the Committee, shall participate in an evaluation, review, recommendation, or decision upon an application or proposal for grant or loan, or other distribution of funds by the Committee, if that person has a direct or indirect financial interest in the applicant or the subject of an application or proposal for a grant or loan or other distribution of funds. If such persons have a financial interest in the application or proposal, it shall be publicly announced at the first meeting of the Committee following disclosure of the interest and recorded in the minutes of the Committee meeting. Notwithstanding any other provision of law to the contrary, where such a financial interest is found to exist, upon such disclosure and disqualification, the Committee may otherwise consider and take action upon any application for grant, loan, or other distribution of funds.*
- (2) No member of the Committee or those persons appointed to attend meetings on their behalf, its staff, contractors, or grant recipients shall receive funding or be employed by persons or business entities engaged in any aspect of tobacco growing, manufacturing, processing, distributing, marketing, or other activities within the tobacco industry.*
- (3) Nothing herein is intended to limit application of the Political Reform Act (Title 9, commencing with Section 81000, of the Government Code) to the Committee or its officers and employees.*

(i) *Annual Public Report*

The Committee shall issue an annual report to the public which sets forth its activities, grants awarded and in progress, research accomplishments, and future program directions. Each annual report shall include, but not be limited to, the following: the number and dollar amounts of research, facilities and treatment grants; the administrative expenses of the Committee, the Fund, and the State Board of Equalization; and a summary of research findings.

(i) Independent Financial Audit

The Committee shall annually commission an independent financial audit of its activities from a certified public accounting firm. Any firm that provides consulting services to the Committee shall be disqualified from providing audit services. The resulting audit shall be provided to the State Controller, who shall review the audit and annually issue a public report of that review.

(k) Limitation on Administrative Costs

Not more than two percent (2%) of the annual revenues derived from this Act shall be used for the costs of general administration of this Act. The State Controller shall provide the Committee and its Auditor with reports that set forth the allowable costs for general administration. The annual audit shall include a review of the costs of general administration of the Committee, the Fund, and the State Board of Equalization.

§30130.56 Penalties

- (a) Each officer or employee of the Committee, and every other person charged with the receipt, safekeeping, transfer, or disbursement of trust funds as defined in this Act, who either:*
- (1) Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or,*
 - (2) Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,*
 - (3) Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,*
 - (4) Fraudulently alters, falsifies, conceals, destroys, or obliterates any account; or,*
 - (5) Willfully refuses or omits to pay over, on demand, any public moneys in his or her hands, upon the presentation of a draft, order, or warrant drawn upon these moneys by competent authority; or,*
 - (6) Willfully omits to transfer the same, when transfer is required by law; or*
 - (7) Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him or her under any duty imposed by law so to pay over the same;*

(8) *Is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state.*

(b) *As used in this section, "public moneys" includes the proceeds derived from trust funds, as defined in this Act and from loans or grants authorized by the Committee from such trust funds.*

§ 30130.55 Statutory References

Unless otherwise stated, all references in this Act refer to statutes as they existed on December 31, 2009.

SECTION 4. Severability

If the provisions of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect and to this end the provisions of this Act are severable.

SECTION 5. Conflicting Measures

- (a) It is the intent of the People that in the event that this measure and another measure relating to the taxation of tobacco shall appear on the same statewide election ballot, the provisions of the other measure or measures shall not be deemed to be in conflict with this measure, and if approved by the voters, this measure shall take effect notwithstanding approval by the voters of another measure relating to the taxation of tobacco by a greater number of affirmative votes.
- (b) If this measure is approved by the voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting measure is later held invalid, this measure shall be self-executing and given the full force of law.

SECTION 6. Amendments

- (a) Except as hereafter provided, this Act may only be amended by the electors as provided in Article II, Section 10, subdivision (c) of the California Constitution.
- (b) Notwithstanding the provisions of subdivision (a) of this section, not earlier than fifteen (15) years from the effective date of this Act, the Committee, by majority vote of its members, may recommend changes in the structure and operation of the Committee to the Legislature. The Legislature may amend the provisions of Revenue and Taxation Code Section 30130.54 to further the purposes of the Act by a statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring, that is consistent with the recommendations of the Committee.

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January 15, 2010

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative (File No. 09-0097). This measure would increase excise taxes on cigarettes and use these revenues to fund various health research and tobacco-related programs.

BACKGROUND

Tobacco Taxes

Existing Tax Rate. Current state law imposes excise taxes on cigarettes and other tobacco products. The state's cigarette tax is currently 87 cents per pack (with an equivalent tax on other types of tobacco products) and is levied on cigarette distributors who supply cigarettes to retail stores. The proceeds are used for both General Fund and certain special fund purposes.

The total 87 cents per pack tax is made up of the following components:

- Fifty cents per pack pursuant to the California Children and Families First Act of 1998. This measure, enacted by the voters that year as Proposition 10, supports early childhood development programs.
- Twenty-five cents per pack pursuant to the Tobacco Tax and Health Protection Act. This initiative, enacted by the voters as Proposition 99 in 1988, increased the cigarette tax by 25 cents per pack, and provided that the tax on other tobacco products be raised commensurately with this and any future tax on cigarettes. These revenues are allocated to tobacco education and prevention efforts, tobacco-related disease research programs, and health care services for low-income uninsured persons, as well as for environmental protection and recreational resources.

- Ten cents per pack for the state General Fund.
- Two cents per pack enacted through a separate measure approved by the Legislature and Governor in 1993 to create the Breast Cancer Fund, which supports research efforts related to breast cancer and of breast cancer screening programs for uninsured women.

Sales of cigarettes and other tobacco products also are subject to the sales and use tax, which is imposed on their price including excise taxes.

Existing Backfill Provisions. Part of the Proposition 10 revenues are used to “back-fill” or offset any revenue losses experienced by Proposition 99’s health-related education and research programs and the Breast Cancer Fund due to decreased consumption of tobacco products resulting from Proposition 10’s tax increase. (Revenue reductions to Proposition 99 health care and resources programs were not backfilled under the provisions of Proposition 10.) The revenue reductions occur because an increase in the price of cigarettes generally reduces cigarette consumption and results in more sales for which taxes are not collected, such as smuggled products and out-of-state sales.

PROPOSAL

New State Tobacco Tax Revenues

The average retail price of a pack of cigarettes currently is roughly \$5 in California, including all taxes. This measure increases the existing excise tax on cigarettes by \$1 per pack effective 90 days after its passage. Existing state law requires the Board of Equalization (BOE) to increase taxes on other tobacco products—such as loose tobacco and snuff—in an amount equivalent to any increase in the tax on cigarettes. Thus, this measure would also result in a comparable increase in the excise tax on other tobacco products. The measure does not specify how revenues from increased excise taxes on other tobacco products would be used. Under current law, those revenues would be deposited in the Cigarette and Tobacco Products Surtax Fund and used to support Proposition 99 programs.

How Additional Tobacco Revenues Would Be Spent

Receipts from the tobacco tax increases would be deposited in a new special fund created by the measure called the California Cancer Research and Life Sciences Innovation Trust Fund. After compensating existing tobacco tax programs for any losses due to the imposition of the new tax, the monies would be distributed from the trust fund among five funds as follows:

- *Hope 2010 Research Fund.* Sixty percent of the funds would be used to provide grants and loans to support research on prevention, diagnosis, treat-

ment, and potential cures for tobacco-related diseases such as cancer and heart disease.

- *Hope 2010 Facilities Fund.* Fifteen percent would be used to provide grants and loans to build and lease facilities and provide capital equipment for research on tobacco-related diseases.
- *Hope 2010 Smoking Cessation Fund.* Twenty percent would be used for tobacco prevention and cessation programs administered by the California Department of Public Health (DPH) and the California Department of Education.
- *Hope 2010 Law Enforcement Fund.* Three percent would be allocated to state agencies to support law enforcement efforts to reduce smuggling, tobacco tax evasion, illegal sales of tobacco to minors, and to otherwise improve enforcement of existing law.
- *Hope 2010 Committee Account.* Two percent would be deposited into an account that would be used to pay the costs of tax collection and expenses of administering the measure.

Committee Established to Administer Trust Fund

The trust fund would be overseen by a nine-member Cancer Research Citizen's Oversight Committee established by the measure. The committee would be composed of four members appointed by the Governor, three of whom are directors of designated cancer centers; two members appointed by DPH; and three chancellors from certain University of California campuses where biomedical scientific research is conducted.

Authority Granted to the Committee. The measure gives the committee the authority to develop a long-term financial plan including an annual budget and to establish a process for soliciting, reviewing, and awarding grants and loans for researchers and facilities. The committee would have the authority to appoint a chief executive officer and other employees. The committee also would have the authority to make final decisions on awards of loans and grants and to establish policies regarding intellectual property rights arising from research funded by this measure.

Tax Collection and Administrative Costs. The committee would be authorized by this measure to reimburse BOE from the Hope 2010 Committee Account for the cost of collecting the new tax levy. This account would also be used to pay for any expenses of administering the act, such as hiring employees.

Accountability Measures. The measure would require the committee to issue an annual report to the public that included information on its administrative expenses, the number and amount of grants and loans provided, and a summary of research findings. The committee would also be required to commission an independent financial audit

that would be provided each year to the State Controller, who would then review the audit and publicly report on the review. The State Controller would also provide the committee with reports that set forth the allowable costs for general administration of the trust fund.

The measure includes conflict-of-interest provisions that govern the conduct of committee members, and includes specific criminal penalties for anyone convicted for the misuse of trust fund monies.

Other Expenditure Rules

Committee Administers Trust Fund. Under this measure, the committee would be authorized to administer the trust fund. The funds allocated under this measure would not be subject to appropriation by the Legislature through the annual state budget act, and thus, amounts would not be subject to change by actions of the Legislature and Governor.

Transfers Permitted From Facilities Fund. In the event the committee determined that there was a surplus in the Hope 2010 Facilities Fund, the measure authorizes the committee to transfer those monies to the Hope 2010 Research Fund, the Hope 2010 Smoking Cessation Fund, or the Hope 2010 Law Enforcement Fund.

New Backfill Provisions. The measure requires the transfer of monies from the trust fund to backfill any losses that occur to the Cigarette and Tobacco Products Surtax Fund (Proposition 99), the California Children and Families First Fund (Proposition 10), the Breast Cancer Fund, and the General Fund that directly result from imposition of the additional tax.

FISCAL EFFECTS

This measure is likely to have a number of fiscal effects on state and local governments.

Impacts on State and Local Revenues

Revenues Will Be Affected by Consumer Response. Our revenue estimates assume that the distributors of tobacco products, who actually remit the excise tax, largely pass along the excise tax increase of \$1 per pack to consumers. In other words, we assume that the prices of tobacco products would be raised to include the excise tax increase. This would result in various consumer responses. The price increase is likely to result in consumers reducing the quantity of taxable tobacco products they purchase. Consumers could also change the way they acquire tobacco products so that fewer transactions are taxed, such as through Internet purchases or purchases of out-of-state products.

The magnitude of these consumer responses is uncertain given the size of the proposed tax increase. There is substantial evidence regarding the response of consumers

to small and moderate tax increases on tobacco products in terms of reduced tobacco consumption. However, the increase in taxes proposed in this measure is greater than experienced previously in the state. A reasonable projection of consumer response is incorporated into our revenue estimates, but these estimates are still subject to uncertainty given a variety of factors, including the large tax change involved.

New Excise Tax Revenues. Estimated revenues from current excise taxes on cigarettes and other tobacco products are about \$850 million a year. We estimate that the increase in excise taxes required by this measure would raise about \$450 million in 2010-11 (partial-year effect from January 1 through June 30, 2010) and about \$855 million in 2011-12 (the first full-year impact). Our estimate of the allocation of new excise tax revenues is shown in Figure 1 below. The excise tax increase would raise somewhat less revenue each year thereafter, due to the well-established trend of declining per capita cigarette consumption in the state. The higher tax also would reduce revenues from the existing excise tax, as discussed further below.

Figure 1 Allocation of New Tobacco Tax Revenues		
(Dollars in Millions)		
Backfill	Allocation	2011-12 Funding (Full Year)
Backfill of Proposition 99, Proposition 10, General Fund, and Breast Cancer Account	To be determined by BOE	\$75
Account/Fund		
Research Fund	60 percent of remaining funds	\$468
Facilities Fund	15 percent of remaining funds	117
Smoking Cessation Fund	20 percent of remaining funds	156
Law Enforcement Fund	3 percent of remaining funds	23
Committee Account	2 percent of remaining funds	16
Total Tobacco Tax Funding Allocations		\$855

BOE = Board of Equalization.

Effects on Existing Tobacco Excise Tax Revenues. The decline in consumption of tobacco products caused by this measure would similarly reduce revenues from the existing tobacco taxes. The measure ensures that revenues for the existing tobacco taxes do not decline due to lower cigarette consumption caused by the new excise tax. We estimate that this allocation of backfill funding would initially amount to about \$75 million annually.

In addition to its allocation of backfill funding, Proposition 99 programs would receive additional revenues because of the existing provision in state law under which any cigarette tax increase triggers an the automatic increase in the taxes collected on

other tobacco products. We estimate that this factor would result in a revenue gain for Proposition 99 programs of about \$45 million annually.

Effects on Excise Tax Collection. As discussed above, the measure would deposit 3 percent of total revenues into a Law Enforcement Fund to support law enforcement efforts. These funds would be used to support increased enforcement efforts to reduce tax evasion, counterfeiting, smuggling, and the unlicensed sales of cigarette tobacco products; increased enforcement of existing laws; and efforts to reduce sales of tobacco products to minors. These activities would probably have a minor impact on the amount of revenues collected through the excise tax.

Effect on State Sales Tax Revenues. Sales taxes are levied on the final price of cigarettes and other tobacco products, including all excise taxes. The higher price of cigarettes resulting from the new excise tax, therefore, would increase state General Fund revenues. We estimate that the state's General Fund sales tax revenues would increase by about \$22 million annually.

Effects on Local Revenues. Local governments would likely experience an annual increase in sales tax revenues of approximately \$10 million.

Impact on State and Local Government Costs

The state and local governments incur costs for providing (1) health care for low-income persons and (2) health insurance coverage for state and local government employees. Consequently, changes in state law that affect the health of the general populace—and low-income persons and public employees in particular—would affect publicly funded health care costs.

The use of tobacco products has been linked to various adverse health effects by federal health authorities and numerous scientific studies. This measure is likely to result in a decrease in the consumption of tobacco products because of its provisions increasing the cost of these products and curbing tobacco use. To the extent that these changes affect publicly funded health care programs, they are likely to reduce state and local government health care spending on tobacco-related diseases.

However, this measure may have other fiscal effects that may partially or fully offset these cost savings. For example, the state and local governments may incur future costs for the provision of health care and social services that may otherwise not have occurred, such as long-term care for individuals who avoid tobacco-related diseases and live longer. Thus, the net fiscal impact of this measure on state and local government costs is unknown.

Summary

The measure would have the following major impacts:

- Increase in new cigarette tax revenues of about \$855 million annually by 2011-12, declining slightly annually thereafter, for various health research and tobacco-related programs.
- Increase of about \$45 million annually to existing health, natural resources, and research programs funded by existing tobacco taxes.
- Increase in state and local sales taxes of about \$32 million annually.

Sincerely,

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