



# REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

**STAFF REPORT**  
**April 17, 2012**

Honorable Members of the  
Law and Legislation Committee

**Title: City Positions on June 2012 Statewide Ballot Measures**

**Location/Council District:** Citywide

**Recommendation:** Approve preliminary positions on June 2012 Statewide Ballot measures and forward to the City Council for adoption.

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**Presenter:** Mark Prestwich, Special Projects Manager, (916) 808-5380

**Department:** City Manager's Office

**Division:** Government Affairs

**Organization No:** 02001021

## **Description/Analysis**

**Issue:** The City's Law and Legislation Committee reviews and approves preliminary positions on statewide ballot measures in advance of each election. The Committee's positions are forwarded to the City Council for consideration and possible action. Two propositions qualified for the June 5, 2012 statewide ballot. Proposition 28 proposes modifications to State legislative terms limits and Proposition 29 proposes to increase the State's \$0.87 per pack excise tax on cigarettes by \$1 per pack from \$0.87 to \$1.87 per pack.

**Policy Considerations:** The Council's adopted legislative principles do not specifically address the Proposition 28 proposed term limit changes. The legislative principles support ballot measures intended to preserve local government revenues. It is probable that passage of Proposition 29 will result in a small incremental increase in sales tax revenue.

**Environmental Considerations:** Policy and procedure items are exempt from California Environmental Quality Act (CEQA) review under Section 15378(b)(2) of the CEQA Guidelines.

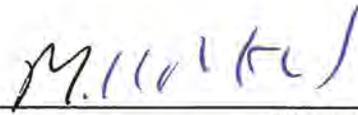
**Sustainability Considerations:** None

**Committee/Commission Action: None**

**Rationale for Recommendation:** Proposition 28 does not affect the City directly and therefore staff recommends the City take no position on this measure. Staff recommends a position of "Support" for Proposition 29. Revenues from Proposition 29 will fund cancer research that is anticipated to decrease the consumption of tobacco products which have been linked to various adverse health effects by federal health authorities and numerous scientific studies. Thus, this measure would reduce local government health care spending on tobacco-related diseases over the long term. Proposition 29 is also likely to result in a small increase in sales tax revenue, resulting in additional resources for critical City services including public safety.

**Financial Considerations:** Proposition 28 (term limits) has no financial impact on the City. Proposition 29 (tobacco tax increase) may result in a small incremental increase in sales tax revenue if the increase is passed along to consumers as the State LAO assumes, resulting in additional resources for critical City services including public safety.

**Emerging Small Business Development (ESBD): None**

Respectfully Submitted by:   
Mark Prestwich  
Special Projects Manager, City Manager's Office

Approved by:   
John B. Shirey  
City Manager

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## Background

Staff reviewed the June 2012 statewide ballot measures and considered whether the measures would directly affect City residents and/or its operations. The following is a brief summary and analysis of potential local impacts of each proposition. This report includes attachments consisting of the Legislative Analyst's Office summary of each Proposition as well as the full text of each Proposition.

### **Proposition 28 – Limits on Legislator's Terms in Office. Initiative Constitutional Amendment.**

Proposition 28 proposes to modify the term limits established by Proposition 140 for Members of the California Legislature in November 1990. Under the rules established by Proposition 140, an individual's service generally is restricted to three two-year terms in the Assembly (a maximum of six years) and two four-year terms in the Senate (a maximum of eight years). Therefore, an individual generally cannot serve more than 14 years in the Legislature. If adopted, Proposition 28 will reduce the number of years an individual may serve from 14 to 12 years without regard to whether the years were served in the Assembly or the Senate.

League Position: No Position

Staff Recommended Position: No Position

Rationale: Proposition 28 does not affect City directly.

### **Proposition 29 – Imposes Additional Tax on Cigarettes for Cancer Research. Initiative Statute.**

Current state law imposes excise taxes of \$0.87 per pack on the distribution of cigarettes and other tobacco products. Federal law also imposes an excise tax of \$1.01 per pack. If adopted, Proposition 29 will increase the existing state excise tax on cigarettes by \$1 per pack to a total of \$1.87 per pack. Revenues from the cigarette tax increase would be deposited into a new special fund dedicated to the support of research on cancer and tobacco related diseases, as well as other specific purposes.

League Position: No Position

Staff Recommended Position: Support

Rationale: Revenues from Proposition 29 will fund cancer research that is anticipated to decrease the consumption of tobacco products which have been linked to various adverse health effects by federal health authorities and numerous scientific studies. Thus, this measure could reduce local government health care spending on tobacco-related diseases over the long term.

**Proposition 28**  
**Limits on Legislators' Terms in Office.**  
**Initiative Constitutional Amendment.**

**Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact**

**Fiscal Impact:** No direct fiscal effect on state or local governments.

**Yes/No Statement**

A **YES** vote on this measure means: Future Members of the State Legislature could serve a total of 12 years in office—without regard to whether the years were served in the State Assembly or the State Senate. Legislators first elected on or before June 5, 2012 would continue to be restricted by existing term limits.

A **NO** vote on this measure means: Existing term limits for the Legislature would remain in place for current and future legislators. These limits allow a total of 14 years in office—including a maximum of six years in the State Assembly and eight years in the State Senate.

**Background**

**Existing Legislative Term Limits.** Proposition 140, passed by the state's voters at the November 1990 election, changed the State Constitution to create term limits for Members of the California Legislature. The Legislature has two houses: the State Assembly and the State Senate. Currently, an individual's service generally is restricted to three two-year terms in the Assembly (a maximum of six years) and two four-year terms in the Senate (a maximum of eight years). This means that individuals generally cannot serve more than 14 years in the Legislature. An exception is when an individual serves additional time by finishing out less than one-half of the term of another person who left the Legislature (for example, due to resignation).

**Proposal**

This measure, a state constitutional amendment, makes changes to legislative term limits. Senators and Assembly Members who were first elected to the Legislature on or before the date of this election (June 5, 2012) would continue to be subject to the current legislative term limits in the Constitution. Future legislators—that is, legislators first elected after the date of this election—would be subject to the new term limits.

**Reduces Total Number of Years in the Legislature.** This measure reduces to 12 years the total number of years that a future legislator may serve in the Legislature during his or her lifetime.

**Increases Total Number of Years That Can Be Served in One House.** This measure allows future legislators to serve in either house of the Legislature for up to 12 years. Accordingly, an individual could be elected to up to six two-year terms in the Assembly or up to three four-year

terms in the Senate. This means that future legislators could serve for a longer period of time in a single house of the Legislature than is currently the case. Alternatively, an individual could be elected to serve in one house of the Legislature and then be elected to the other house, but his or her total service in the Legislature would be limited to no more than 12 years.

### **Fiscal Effects**

This measure would have no direct fiscal effect on state and local governments. By altering term limits for Members of the Legislature, however, it likely would change which individuals serve in the Assembly and the Senate at any given time. This different composition of the Assembly and the Senate might lead to different decisions being made than otherwise would be the case (for example, on legislation and the state budget). However, these decisions and any effect that they might have on state and local spending and revenues cannot be predicted.

**Proposition 29**  
**Imposes Additional Tax on Cigarettes for Cancer Research.**  
**Initiative Statute.**

**Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact**

**Fiscal Impact:** Net increase in cigarette excise tax revenues of about \$735 million annually by 2013-14 for certain research and tobacco prevention and cessation programs. Other state and local revenue increases amounting to tens of millions of dollars annually.

**Yes/No Statement**

A **YES** vote on this measure means: State excise taxes on cigarettes would increase by \$1 per pack to a total of \$1.87 per pack. These additional revenues would be dedicated to fund cancer and tobacco-related disease research and tobacco prevention and cessation programs.

A **NO** vote on this measure means: State excise taxes on cigarettes would remain at the current level of 87 cents per pack and would continue to be used for existing purposes, including childhood development programs and various health and tobacco prevention and cessation programs.

**BACKGROUND**

**Tobacco Taxes**

*Existing State Excise Taxes.* Current state law imposes excise taxes on the distribution of cigarettes and other tobacco products, such as cigars and chewing tobacco. Tobacco excise taxes are paid by distributors who supply cigarettes and other tobacco products to retail stores. These taxes are typically passed on to consumers as higher cigarette and other tobacco product prices.

The state's cigarette excise tax is currently 87 cents per pack. Figure 1 describes the different components of the per-pack tax. As the figure shows, two voter-approved measures—Proposition 99 in 1988 and Proposition 10 in 1998—are responsible for generating the vast majority of tobacco excise tax revenues. As Figure 1 indicates, total state revenues from existing excise taxes on cigarettes and other tobacco products were just over \$900 million in 2010-11.

Figure 1 Existing State Tobacco Excise Taxes		
(Dollars in Millions)		
Description	Cents Per Pack of Cigarettes	Estimated 2010-11 Net Revenue <sup>a</sup>
State General Fund: Initially enacted by the Legislature in 1959 for general support of the state budget.	10c	396
Proposition 99: Enacted by the voters in 1988 for the purposes of supporting tobacco education and prevention efforts, tobacco-related disease research programs, health care services for low-income persons, and environmental protection and recreational resources. Some Proposition 99 revenues are used to support programs that also receive support from the state General Fund.	25	299 <sup>b</sup>
Breast Cancer Fund: Enacted by the Legislature in 1993 for the purposes of supporting breast cancer screening programs for uninsured women and research related to breast cancer.	2	23
Proposition 10: Enacted by the voters in 1988 for the purposes of supporting early childhood development programs.	50	489 <sup>b</sup>
<b>Totals</b>	<b>87c</b>	<b>\$905<sup>c</sup></b>

<sup>a</sup> Accounts for payments from Proposition 10 to other funds in order to maintain pre-Proposition 10 revenue levels.  
<sup>b</sup> Total includes excise tax revenue from other types of tobacco products, such as cigars and chewing tobacco.  
<sup>c</sup> Does not total due to rounding.

Revenues from existing excise taxes on other tobacco products support Propositions 10 and 99 purposes. Under current law, any increase in cigarette taxes automatically triggers an equivalent increase in excise taxes on other tobacco products, with the revenues going to support Proposition 99 purposes.

**Existing Federal Excise Tax.** The federal government also imposes an excise tax on cigarettes and other tobacco products. In 2009, this tax was increased by 62 cents per pack (to a total of \$1.01 per pack) to help fund the Children's Health Insurance Program, which provides subsidized health insurance coverage to children in low-income families.

**Existing State and Local Sales and Use Taxes.** Sales of cigarettes and other tobacco products are also subject to state and local sales and use taxes. These taxes are imposed on the retail price of a product, which includes excise taxes that have generally been passed along from distributors. The average retail price of a pack of cigarettes in California currently is over \$5. More than \$400 million in annual revenues from sales and use taxes on cigarettes and other tobacco products go to the state and local governments.

### Current Health Research and Tobacco Cessation Activities

Across the country, substantial amounts of money are spent on research related to cancer and tobacco-related diseases, such as heart disease. For example, the federal National Institutes of Health provide several billion dollars annually for grants and research in these areas. Private entities and nonprofits also provide funds for such research. In California, the University of

California (UC) is one of the primary recipients of these research dollars. In addition, UC uses some state funds for this purpose.

Tobacco prevention and cessation programs are currently conducted by public entities, health insurers, and various other organizations. For example, approximately \$50 million a year from Proposition 99 revenues is used to fund tobacco prevention and cessation programs in California.

## **PROPOSAL**

This measure increases excise taxes on the distribution of cigarettes and other tobacco products. It uses the additional revenues raised for research on cancer and tobacco-related diseases (such as heart disease and emphysema), as well as for other specified purposes. The major provisions of the measure are described below.

### **New State Tobacco Tax Revenues**

This measure increases—effective October 2012—the existing state excise tax on cigarettes by \$1 per pack. The total state excise tax, therefore, would be \$1.87 per pack. The measure also creates a one-time “floor tax” on the majority of cigarettes that are stored by businesses at the time the new excise tax is levied. Floor taxes are typically used to prevent businesses from avoiding taxes by stockpiling products before a tax goes into effect.

Existing state law requires the Board of Equalization (BOE) to annually set a tax on other tobacco products—such as cigars and chewing tobacco—at an amount equivalent to the tax on cigarettes. Accordingly, this measure would also result in a comparable increase in the excise tax on other tobacco products, with the revenues supporting Proposition 99 purposes.

### **How New Cigarette Tax Revenues Would Be Spent**

Revenues from the cigarette excise tax increase would be deposited in a new special fund, called the California Cancer Research Life Sciences Innovation Trust Fund. These revenues would be dedicated to the support of research on cancer and tobacco-related diseases, as well as for other specified purposes. After compensating existing tobacco tax program funds for any losses due to the imposition of the new tax (as described in the next section), the remaining money would be distributed among five funds:

- ***Hope 2010 Research Fund.*** Sixty percent of the funds would be used to provide grants and loans to support research on prevention, diagnosis, treatment, and potential cures for cancer and tobacco-related diseases. The measure states that all qualified researchers would have an equal opportunity to compete for these research funds.
- ***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 cancer and tobacco-related diseases.
- ***Hope 2010 Tobacco Prevention and 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 cigarette smuggling, tobacco tax evasion, and 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 administering the measure, most of which would likely be reimbursing BOE for tax collection costs.

***Backfill of Existing Tobacco Tax Programs.*** This measure requires the transfer of some revenues from the trust fund to “backfill,” or offset, all revenue losses that are likely to occur to existing state cigarette and tobacco taxes that directly result from the imposition of the additional tax. These revenue losses would occur mainly because an increase in the price of cigarettes and other tobacco products generally reduces consumption and results in more sales for which taxes are not collected, such as Internet purchases and purchases of out-of-state products. This, in turn, would reduce the amount of revenues collected through the existing state excise taxes described above. The amount of backfill payments needed to offset any loss of funding in these areas would be determined by BOE.

#### **Committee Established to Administer Trust Fund**

The trust fund would be overseen by a newly created Cancer Research Citizen’s Oversight Committee. The committee would be composed of the following nine members:

- Four members appointed by the Governor, three of whom are directors of one of the ten designated cancer centers in California.
- Two members appointed by the Director of DPH, at least one of whom has been treated for a tobacco-related illness.
- Three chancellors from UC campuses that are members of the California Institute for Quantitative Biosciences Research. (Currently, three UC campuses—Santa Cruz, Berkeley, and San Francisco—are institute members.)

***Authority Granted to the Committee.*** The measure authorizes the committee to administer the trust fund. The funds would have to be expended solely for the purposes described in the act. The funds would be allocated by the committee. Thus, they would not be subject to appropriation by the Legislature. Furthermore, these funds could not be loaned to other state funds.

The measure gives the committee the authority to:

- Develop short- and long-term financial plans.
- Establish a process for soliciting, reviewing, and awarding grants and loans for researchers and facilities.
- Appoint a chief executive officer and other employees.
- Establish policies regarding intellectual property rights arising from research funded by this measure.

### **Other Major Provisions**

***Transfers Permitted From Facilities Fund.*** In the event the committee determines that there is a surplus in the Hope 2010 Facilities Fund, the measure would authorize the committee to transfer the surplus money to the Hope 2010 Research Fund, the Hope 2010 Tobacco Prevention and Cessation Fund, or the Hope 2010 Law Enforcement Fund.

***Accountability Measures.*** The measure requires the committee to issue an annual report to the public that includes information on its administrative expenses, the number and amount of grants provided, and a summary of research accomplishments. The committee would also be required to have an independent financial audit each year. 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.

### **FISCAL EFFECTS**

This measure would have a number of fiscal effects on state and local governments. The major impacts are discussed below.

#### **Impacts on State and Local Revenues**

***Revenues Would Be Affected by Consumer Response.*** Our revenue estimates assume that the proposed excise tax increase would be passed along to consumers. In other words, we assume that the retail prices of cigarettes and other tobacco products would be raised to include the excise tax increase. This would result in various consumer responses. The price increase would result in consumers reducing the quantity of taxable tobacco products they consume. 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. While we believe a reasonable projection of consumer response is incorporated into our revenue estimates, they are still subject to some uncertainty.

***New Cigarette Excise Tax Revenues.*** We estimate that the increase in cigarette excise taxes required by this measure would raise about \$615 million in 2012-13 (partial-year effect) and about \$810 million in 2013-14 (the first full-year impact). Our estimate of the allocation of new cigarette excise tax revenues in 2013-14 is shown in Figure 2. After backfilling losses in existing tobacco excise tax revenue (described in more detail below), the new cigarette excise tax would generate an estimated \$735 million in net revenue in 2013-14 for the purposes described in the measure. The cigarette excise tax increase would generate somewhat lower amounts of revenue each year thereafter, based on our projections of continued declining cigarette consumption.

**Figure 2**  
**How Estimated Revenue From New Cigarette Tax**  
**Would Be Allocated**  
 (Dollars in Millions)

	Allocation	2013-14 Funding (Full Year)
Estimated revenue from new cigarette tax		\$910
Less backfill to Proposition 99, Proposition 10, General Fund, and Breast Cancer Fund	—	-75 <sup>a</sup>
<b>Estimated Net Revenue</b>		<b>\$735</b>
<b>Allocation of estimated net revenue</b>		
Research Fund	60%	\$441
Facilities Fund	15	110
Tobacco Prevention and Cessation Fund	20	147
Law Enforcement Fund	3	22
Committee Account	2	15

<sup>a</sup> LAO estimate. Backfill amounts would be determined by the Board of Equalization.

**Effects on Existing Tobacco Excise Tax Revenues.** The decline in consumption of cigarettes and other tobacco products caused by this measure would reduce revenues from the existing excise taxes that go to support Propositions 99 and 10 purposes, the General Fund, and the Breast Cancer Fund. The measure provides for the backfill of these losses from revenues raised by the new excise tax. We estimate that the amount of backfill funding needed to comply with this requirement would be about \$75 million annually, as shown in Figure 2.

As noted earlier, this measure would have an additional fiscal effect on excise taxes which go to support Proposition 99 purposes. Under current law, any cigarette tax increase triggers an automatic corresponding increase in the taxes on other tobacco products, with the additional revenues going to support Proposition 99 purposes. We estimate that the higher tax on other tobacco products would result in a full-year Proposition 99 revenue gain of about \$50 million, beginning in 2013-14.

**Effects on State and Local Sales and Use Tax Revenues.** Sales and use taxes are levied on a variety of products, including the retail price of tobacco products. The retail price usually includes the cost of all excise taxes. The higher retail price of tobacco products resulting from the new excise tax, therefore, would increase state and local revenue from the sales and use tax on tobacco products. This effect would be offset somewhat by several factors, including lower spending on other products subject to sales and use taxes. On net, we estimate an increase in revenue of about \$10 million to \$20 million annually.

**Effects on Excise Tax Collection.** As discussed above, the measure would deposit 3 percent of revenues from the new cigarette tax into a Law Enforcement Fund to support state law enforcement efforts. These funds would be used to support increased enforcement efforts to reduce tax evasion, counterfeiting, smuggling, and the unlicensed sales of cigarettes and other

tobacco products. The funds would also be used to support efforts to reduce sales of tobacco products to minors. These activities would have an unknown net impact on the amount of revenues collected through excise taxes.

### **Impact on State and Local Government Health Care Costs**

The state and local governments in California incur costs for providing (1) health care for low-income and uninsured persons and (2) health insurance coverage for state and local government employees and retirees. Consequently, changes in state law such as those made by this measure that affect the health of the general population—and low-income and uninsured persons and public employees in particular—would affect publicly funded health care costs.

For example, as discussed above, this measure would result in a decrease in the consumption of tobacco products. The use of tobacco products has been linked to various adverse health effects by federal health authorities and numerous scientific studies. Thus, this measure would reduce state and local government health care spending on tobacco-related diseases over the long term. This measure would have other fiscal effects that offset these cost savings. For example, the state and local governments would incur future costs for the provision of health care and social services that otherwise would not have occurred as a result of individuals who avoid tobacco-related diseases living longer. Thus, the net fiscal impact of this measure on state and local government costs is unknown.

Proposition 28 - Full Text

09 - 0048

**Section 1.** This measure shall be known and may be cited as the "Legislative Term Limits Reform Act of 2010."

Amdt. # | S

**Section 2.** It is the intent of this measure to change the current term limits law for Legislators who are now permitted to serve up to 14 years in the Legislature by doing the following:

- (1) Reducing the total number of years a Legislator is permitted to serve from 14 to 12.
- (2) Permitting a Legislator to serve her or his years of service either in the Assembly, Senate, or a combination of the two.
- (3) Prohibiting any current or former Legislator from benefiting in any way from this reform.

**Section 3. Section 2 of Article IV of the California Constitution is amended to read:**

SEC. 2. (a) (1) The Senate has a membership of 40 Senators elected for 4-year terms, 20 to begin every 2 years. ~~No Senator may serve more than 2 terms.~~

(2) The Assembly has a membership of 80 members elected for 2-year terms. ~~No member of the Assembly may serve more than 3 terms.~~

(3) ~~Their terms~~ The terms of a Senator or a Member of the Assembly shall commence on the first Monday in December next following their her or his election.

(4) During her or his lifetime a person may serve no more than 12 years in the Senate, the Assembly, or both, in any combination of terms. This subdivision shall only apply to those Members of the Senate or the Assembly who are first elected to the Legislature after the effective date of this subdivision and who have not previously served in the Senate or Assembly. Members of the Senate or Assembly who were elected before the effective date of this subdivision may only serve the number of terms allowed at the time of the last election before the effective date of this subdivision.

(b) Election of members of the Assembly shall be on the first Tuesday after the first Monday in November of even-numbered years unless otherwise prescribed by the Legislature. Senators shall be elected at the same time and places as members of the Assembly.

(c) A person is ineligible to be a member of the Legislature unless the person is an elector and has been a resident of the legislative district for one year, and a citizen of the United States and a resident of California for 3 years, immediately proceeding the election, and service of the full term of office to which the person is seeking to be elected would not exceed the maximum years of service permitted by subdivision (a) of this section.

(d) When a vacancy occurs in the Legislature the Governor immediately shall call an election to fill the vacancy.

**Section 4. Severability**

The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**Section 5. Conflicting Initiatives**

In the event that this measure and another measure or measures changing the number of terms or years a legislator may serve in office shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be void.

\* \* \* \* \*

**Proposition 29 - Full Text**

09 - 0097

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 1 (commencing with Section 6250), Chapter 3.5, Division 7, Title 1 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.*

***(j) 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.