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August 10, 2011

The Honorable Christine Kehoe
Chair, Senate Standing Committee on Appropriations
State Capitol, Room 5050
10th & L Streets
Sacramento, CA 95814

Re: Assembly Bill 1069: Oppose Unless Amended

Dear Senator Kehoe:

The Tobacco Education and Research Oversight Committee (TEROC) is a legislatively mandated oversight committee (California Health and Safety Code Sections 104365-104370) that monitors the use of Proposition 99 tobacco tax revenues for tobacco control and prevention education and for tobacco-related research in California. This includes the functions of the California Department of Public Health, California Tobacco Control Program; the California Department of Education; and the Tobacco-Related Disease Research Program at the University of California, Office of the President.

Our legislative mandate includes the requirement to produce a comprehensive master plan for implementing tobacco education programs throughout the state for the prevention and cessation of tobacco use, and recommendations on administrative arrangements, funding priorities, integration, and coordination of approaches by our tobacco control agencies.

TEROC is aware that in 2009, the California legislature appropriated \$500 million over five years for motion picture and television series production subsidies. We understand that film and television productions are already being qualified for the tax credits, with Credit Certificates to be issued this year. On February 18, 2011, we wrote to the California Film Commission, the state agency implementing the detailed rules and standards for films to qualify under the California Film and Television Tax Credit Program, to express concern about the California Film and Television Tax Credit Program subsidizing commercial motion pictures with tobacco content.

In our letter to the California Film Commission, we cited clear scientific evidence of the damaging effects of such films on youth smoking prevalence. We observed that the public subsidy of commercial entertainment products promoting tobacco use among adolescents runs counter to the intent of the 1998 Master Settlement Agreement between state Attorneys General, including the California Attorney General, and the major cigarette companies.



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It is also contradictory that while California taxpayers' dollars are being allocated to public health prevention efforts to reduce youth smoking, millions more are allocated to film subsidies that, in effect, are promoting youth smoking. Any benefit film incentives might have for California's interstate competitiveness must be balanced against the proven, deadly risks to young audiences and the long-term health costs to the state.

Finally, we urged the California Film Commission to amend the Program's rules and regulations so that California's incentive program reflects the public health priorities of our state and the nation. To align public film subsidies with public health evidence and goals, we strongly endorse the following policy solution: *Make future films with tobacco imagery or reference ineligible for public subsidies.*

In a response dated March 4, 2011, the California Film Commission's Executive Director stated: "Adding a requirement in regulations for the exclusion of tobacco related content would have no statutory basis. *Introducing such a requirement would be the proper subject of legislation.*" [Emphasis added]

The Centers for Disease Control and Prevention (CDC) have subsequently suggested state and local health departments work with state policy makers to harmonize their state movie subsidy programs with their tobacco-control programs by limiting eligibility for subsidies to tobacco-free movies.¹

We have now learned that Assembly Bill (AB) 1069 is advancing through the California Legislature. AB 1069 would renew the California Film and Television Tax Credit Program with \$500 million in public funds for an additional five years, through 2019. We have been informed that California public health advocates have approached the bill's author, Assembly Member Felipe Fuentes, expressing concerns such as those shared in this letter, and offering language to amend AB 1069 to make ineligible for public subsidy from the California Film and Television Tax Credit Program:

"any production that depicts or refers to any tobacco product or nonpharmaceutical nicotine delivery device or its use, associated paraphernalia or related trademarks or promotional material" (*to be added to proposed Section 1705.85(b)(15)(D) and Section 23685(b)(15)(D) of California Revenue and Taxation Code*).

To our knowledge, Assembly Member Fuentes has yet to make a decision on amending this bill.

¹ U.S. Centers for Disease Control and Prevention (2011). *MMWR*, 60(27);909-913. Available at <http://www.cdc.gov/mmwr/PDF/wk/mm6027.pdf>

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Tobacco imagery in films continues to be a significant and pervasive issue. The California Film and Television Tax Credit Program's data reveal that California is among the states influencing youth to begin smoking by using taxpayer funds to award tax credits to top-grossing movies featuring tobacco imagery (see attachment).

Given the persistence of some major studios in featuring tobacco in their top-grossing films, extending the California Film and Television Tax Credit Program in its present form will subsidize additional top-grossing movies that promote smoking. Amending AB 1069 will ensure the Program does not continue to undermine a fundamental public health priority: reducing youth smoking initiation.

While California is a world leader in film and television production, our state also has a strong record of leading the nation and the world on tobacco prevention efforts. Our tobacco prevention efforts over more than 20 years have saved more than a million lives and \$86 billion in health care costs. It is unconscionable that one state program threatens to undermine our state's public health achievements and goals, our investment in tobacco prevention, and our savings in health care costs, particularly in a time of state fiscal straits. California taxpayers should not be obliged to support film content that contributes to preventable disease and death, and that also exacerbates the state deficit. There is no legal barrier for states to exercise discretion regarding content that makes films ineligible to receive public funding. California should provide leadership in this matter and end film production subsidies for films with tobacco imagery.

For these reasons, and in accord with our responsibility to make budgetary and programmatic recommendations to the Legislature, TEROC urges you to amend AB 1069 by adding the recommended language to the definition of "qualified motion picture" in the Bill. This would implement the CDC recommendation that state motion picture subsidy programs be harmonized with state public health programs.

We look forward to working with you to address this serious issue for the good of California. If you have any questions, you may contact me at (310) 794-0154 or via e-mail at mong@mednet.ucla.edu.

Sincerely,



Michael Ong, M.D., Ph.D.
Chairperson

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Enclosure

cc: The Honorable Mimi Walters (Vice-Chair, Senate Appropriations Committee)
Mark McKenzie, Consultant, Senate Appropriations Committee
The Honorable Ed Hernandez (Chair, Senate Health Committee)
The Honorable Tony Strickland (Vice-Chair, Senate Health Committee)
The Honorable Felipe Fuentes (Chair, Assembly Appropriations Committee)
The Honorable Diane L. Harkey (Vice-Chair, Assembly Appropriations
Committee)
The Honorable William W. Monning (Chair, Assembly Health Committee)
The Honorable Dan Logue (Vice-Chair, Assembly Health Committee)
The Honorable Edmund G. Brown Jr, Governor
Diana S. Dooley, Secretary, Health and Human Services Agency
Ron Chapman, MD, MPH, Director, California Department of Public Health
Ana J. Matosantos, Director, California Department of Finance

**California-subsidized, top-grossing feature films with tobacco imagery released
January 2010-July 2011 (n = 11)**

<i>Film with tobacco</i>	Rating	Company	Ca. tax credits	Box office earnings
<i>Bad Teacher</i>	R	Sony	\$2,355,408	\$125,600,000
<i>Bridesmaids</i>	R	Comcast	\$5,141,743	\$206,600,000
<i>Burlesque</i>	PG-13	Sony	\$7,225,306	\$85,200,000
<i>Faster</i>	R	CBS Films	\$3,816,242	\$34,700,000
<i>Horrible Bosses</i>	R	Time Warner	\$4,897,314	\$32,100,000
<i>Larry Crowne</i>	PG-13	Comcast	\$3,591,584	\$35,300,000
<i>The Lincoln Lawyer</i>	R	Lionsgate	\$364,175	\$57,981,889
<i>No Strings Attached</i>	R	Viacom	\$3,471,168	\$145,600,000
<i>Priest</i>	PG-13	Sony	\$8,349,450	\$75,100,000
<i>The Social Network</i>	PG-13	Sony	\$4,978,982	\$214,500,000
<i>Water for Elephants</i>	PG-13	News Corp.	\$6,045,843	\$116,100,000
TOTAL			\$50,237,215	\$1,128,781,889

Observations:

- Of the eighteen California-subsidized feature films released to theaters nationally, to date, eleven (61%) have featured tobacco imagery.
- Of the eleven movies that were youth-rated PG or PG-13, nearly half (5/11) included tobacco. Of the seven movies rated PG-13, five (71%) included tobacco imagery.

Notes:

- *Were California-subsidized films more likely to feature tobacco?* In 2009-2010, 52% (54/112) of all top-grossing PG-13 movies in the US featured tobacco, compared to 71% of California-subsidized PG-13 films to date. Of all the top-grossing movies shot in California and released 2009-10, 42% (30/71) included tobacco, compared to 61% of all California-subsidized films to date.
- *To come:* Three more California-subsidized feature films are slated for release by the end of 2011: *Moneyball* (Sony, not yet rated, 9/11); *In Time* (News Corp., not yet rated, 10/11); and *The Muppets* (Disney, not yet rated, 11/11). The tobacco content of these films is not known.
- *Smokefree subsidized movies:* The seven California-subsidized films *without* tobacco imagery were: *Crazy, Stupid, Love* (PG-13, Time Warner); *Dinner for Schmucks* (Viacom, PG-13); *Friends with Benefits* (Sony, R); *Hop* (Comcast, PG); *Judy Moody and the Not Bummer Summer* (PG); *Prom* (Disney, PG); and *You Again* (Disney, PG).