

## COMMITTEE OF THE WHOLE

### **Regulation of Second Hand Smoke on the Campuses of the California State University; Delegation of Authority**

#### **Presentation By**

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#### **Summary**

It is recommended that the Board expressly delegate authority to the presidents to regulate second hand smoking on campus grounds. A regulation that would apply to all individuals on campus would require the amendment of Title 5, adding section 42356 to Article 9, "Use of California State University Buildings and Grounds," of Subchapter 5, Chapter 1, Division 5 of Title 5 of the *California Code of Regulations*. Such an amendment would provide campus presidents authority to extend second hand smoking policy to all individuals, including members of the public. Willful violation of the campus rule would be a misdemeanor under Education Code Section 89031. At the direction of the Committee, staff will prepare a Title 5 amendment for consideration at the September meeting.

#### **Background**

At the May 15 Board of Trustees' plenary session, a student group representing a statewide effort identified as C.O.U.G.H. (Campuses Organized and United for Good Health) spoke of the dangers of second hand smoke and asked the Board of Trustees to delegate authority to the presidents to prohibit smoking on campus grounds at least 20 feet from buildings, systemwide. In response, a trustee request was made that the matter be discussed at the July board meeting.

California Government Code sections 19994.31 and 19994.32 provide in part as follows:

“Commencing January 1, 1994, no state employee or member of the public shall smoke any tobacco product inside a state-owned and state-occupied or a state-leased and state-occupied building, or, in an outdoor area within five feet of a main exit or entrance to such a building . . .”

“Except as specified [above], a state employee or other person may smoke in any outdoor area of a state-owned and state-occupied or a state-leased and state-occupied building

unless otherwise prohibited by state law and a sign describing the prohibition is posted by the state agency or other appropriate entity.”

At the present time, there is no other state law prohibiting smoking outside of state university buildings. Education Code section 89031 grants the Board of Trustees authority to establish rules and regulations for the government and maintenance of the buildings and grounds of the CSU, which would include rules about smoking on campus grounds. The Board has not established any rules or regulations governing smoking on campus grounds for all persons including members of the public in excess of the limit prescribed in section 19994.31 of the Government Code.

Under authority granted in Education Code section 89031, if the Board of Trustees add section 42356 to Title 5, giving presidents the authority to set policy regarding the regulation of second hand smoking on campus grounds in excess of the limit established in California Government Code section 19994.31, every person who violates or attempts to violate the rules would be guilty of a misdemeanor. Since there may be negotiable impacts to represented employees from any rule adopted by a campus, notice of the rule would need to be given to the employee unions before implementation of the rule.

### **Recommended Action**

Staff recommends the delegation of authority to the campus presidents who can issue rules responsive to local conditions. Further, by acting under the authority of Education Code Section 89031, the rules may apply to everyone.

If the Committee deems it appropriate, it may direct staff to prepare the necessary notices and language for consideration and action at the September meeting.