Via Email

Financial Estimate Committee
elections.sos@oregon.gov

Re: Draft Financial Estimate Impact Statement for IRR 402 (HB 2270)

Dear Members of the Financial Estimate Committee:

I represent Oregonians for a Smoke Free Tomorrow, the political committee advocating for passage of IRR 402, the legislative referral of House Bill 2270. I write regarding the draft financial estimate impact statement for IRR 402. I respectfully submit that the draft statement does not comply with the requirements of ORS 250.125. Of most substantial concern is the description of the impact IRR 402 would have on local government, General Fund and OHA program revenue. That description – in the second paragraph, and the accompanying table – would be extremely confusing, and potentially misleading, to voters. We ask that the Committee either significantly revise or delete the second paragraph and delete the accompanying table.

The financial estimate impact statement also does not address the influx of substantial federal matching funds if IRR 402 is approved by voters. Because that is a financial effect if the measure passes, it should be included in the statement.

By law, a financial impact statement must be “impartial, simple and understandable.” ORS 250.125. The Committee’s task is explaining the financial effects of this measure in a way that voters will understand. The financial estimate impact statement is intended to be a resource for the general public. It should be written in a way that will be readily accessible to the intended reader.

The most significant financial impact of IRR 402 will be an exponential increase in revenue from new taxes imposed on nicotine products (e-cigarettes and vaping devices), a new, additional $2 per pack cigarette tax, and an increase in the cigar tax. The new funds that will be raised by the measure are ten times greater than any potential estimated reduction in revenues from the existing $1.33 per pack tax resulting from decreased cigarette sales. DAS’s Patrick Heath confirmed at the July 8, 2020 committee meeting that “the increases greatly outweigh the decreases.” Yet roughly half of the draft financial estimate impact statement discusses a potential incidental reduction in monies that would be distributed to local governments, the
General Fund and OHA mental health programs. Because of the statement’s excessive focus on a theoretical reduction in revenues from the existing $1.33 per pack tax, any voter reading the draft financial impact statement reasonably could incorrectly conclude that passage of IRR 402 would lead to an overall loss in revenues.

Moreover, the discussion of potential revenue losses to local governments, the General Fund and OHA mental health programs is somewhat speculative. The measure does not change the allocation of the existing $1.33 per pack cigarette tax. Rather, the measure adds a new $2 per pack tax on top of the existing $1.33 tax. From that additional $2 per pack tax, 90% is allocated to the Oregon Health Plan (including for mental health programs). The remaining 10% is allocated to OHA, to distribute to: tribal, Urban Indian Health, regional, culturally-specific and community-specific health programs; and, to state and local public health programs that address tobacco and nicotine use. In other words, even if the increase in the tobacco tax would lead to a reduction in the total number of cigarette packs sold (and a corresponding reduction in distribution of revenue from the $1.33 per pack tax to local governments, the General Fund and OHP mental health programs), the $2 per pack tax increase may well supplement any such losses in revenues. The 90% of the new $2 per pack tax provided to OHA may be used directly to fund OHP mental health programs, and the additional 10% may be used to fund local government programs. There may well be no actual loss when the funds are distributed. In fact, the measure is structured to safeguard against such losses. Yet, the second paragraph of the draft financial impact statement (and the table) leave a contrary impression.

The table following the second paragraph is particularly problematic. Voters naturally will be drawn to that table. It is set-off visually and presents data in a way that emphasizes a small, theoretical loss in revenues that will be supplemented with other revenues generated by the measure. For consistency in presentation, the table should be eliminated; to the extent any potential reduction in revenue from the $1.33 per pack tax is discussed, that should be in the text. Alternatively, a second table could be added, showing the overall increase in revenue the measure would bring. We believe this latter option is less preferable, because it will only further complicate the statement. But, it is both confusing and potentially misleading to have perceived incidental losses presented in both the narrative and a separate table, while the more substantial revenue gains are discussed only in text.

The financial estimate impact statement should also mention that passage of the measure will lead to the receipt of significant federal matching funds. The financial estimate impact statement for Measure 101 (2018) discussed the possible loss of federal Medicaid matching funds if Measure 101 was defeated. The financial estimate impact statement for this measure similarly should address the influx of federal matching funds if the measure is approved.

We respectfully recommend the that the second paragraph and table be deleted from the financial estimate impact statement for all the reasons discussed above. A discussion of a potential reduction in revenues from the existing, unmodified $1.33 per pack tax is unnecessary and potentially inappropriate.
Thank you for your consideration of these comments.

Very truly yours,

Steven C. Berman

SCB:gs