



AB 669- Taxation: Sweetened Beverage Tax: Children’s Health Promotion Fund

SUMMARY OF THE BILL: This bill would impose a tax on every distributor, as defined, for the privilege of distributing in this state bottled sweetened beverages, sweetened beverages, and concentrate at the rate of \$0.01 per fluid ounce on bottled sweetened beverages and sweetened beverages distributed in this state, or at the rate of \$0.01 per fluid ounce of sweetened beverage to be produced from concentrate distributed in this state.

RECOMMENDED ACTION: Support

REASON FOR RECOMMENDATION/IMPACT TO COUNTY

AB 669 could raise \$1.7 billion for childhood obesity programs. AB 669 draws a direct line between a 228% increase in soda consumption and the costly childhood obesity epidemic in California. Research also indicates that 41% of California children 2 to 11 years of age, and 62% of California teens 12 to 17 years of age drink soda daily. For every additional serving of sweetened beverage consumed by a child per day, the likelihood of that child becoming obese increases by 60%. According to the County Public Health Department, 33.5% of children ages 2-5 years old in the WIC program for low-income families are overweight or obese. According to the Pediatric Nutrition Surveillance System, 45.5% of children ages 5-20 years old in lower-income families within the County are overweight or obese. There are several local activities and programs that could be supported with funds from AB 669 revenue such as:

- Funding for payments of scholarship fees for team sports, team uniforms and shoes, and loaned sports equipment for public parks and recreation departments, school-based after-school sports programs, and for Boys and Girls Clubs and Girls, Inc. – all of which serve low-income children and youth in cities and unincorporated communities;
- Sponsoring part-time positions for healthy cooking classes specifically geared toward low-income families, children and youth in the organizations listed above;
- Sidewalks and improved lighting for walking safety in low-income neighborhoods, and recreational fields and tracks in cities and in unincorporated communities. Many low-income areas have sidewalks that are disjointed, unsafe (e.g. next to high-speed traffic) and/or poorly maintained. Many are entirely without sidewalks. Adequate night lighting for safety is lacking in these same neighborhoods and at some public outdoor tracks;
- Purchasing of healthy produce and staples by the Foodbank of Santa Barbara County, which serves low-income families in need of nutritious food;
- Funding part-time positions to manage free community garden plots in each community; and
- Funding for medical and dental insurance for more low-income families.

POSSIBLE SUPPORTERS

County Public Health Departments, California Center for Public Health Advocacy.

POSSIBLE OPPOSITION

Sweetened beverage manufacturers.

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ASSEMBLY BILL

No. 669

Introduced by Assembly Member Monning

February 17, 2011

An act to add Part 14.5 (commencing with Section 32600) to Division 2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 669, as introduced, Monning. Taxation: sweetened beverage tax: Children's Health Promotion Fund.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose a tax on every distributor, as defined, for the privilege of distributing in this state bottled sweetened beverages, sweetened beverages, and concentrate at the rate of \$0.01 per fluid ounce on bottled sweetened beverages and sweetened beverages distributed in this state, or at the rate of \$0.01 per fluid ounce of sweetened beverage to be produced from concentrate distributed in this state. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. This bill would exempt from the tax, among other things, the distribution in this state of bottled sweetened beverages, sweetened beverages, or concentrate made by a distributor to another distributor registered with the board and supported by an exemption certificate that consists of a statement signed under penalty of perjury.

By expanding the definition of the existing crime of perjury and by expanding the application of the Fee Collection Procedures Law, the

violation of which is a crime, this bill imposes a state-mandated local program.

The bill would require the board to deposit all taxes, penalties, and interest collected, less refunds and administrative costs, in the Children’s Health Promotion Fund, which this bill would create. This bill would require all moneys in the fund, upon appropriation by the Legislature, to be allocated to the State Department of Public Health and Superintendent of Public Instruction, as specified, for the purposes of statewide childhood obesity prevention activities and programs. This bill would also authorize the Director of the State Department of Public Health and the Superintendent of Public Instruction to make rules and regulations, and provide procedural measures, to bring into effect those purposes.

This bill would make legislative findings and declarations relating to the consumption of sweetened beverages, childhood obesity, and dental disease.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The prevalence of obesity in the United States has increased
- 4 dramatically over the past 30 years. From the 1960s to the late
- 5 1970s, prevalence was relatively constant, with about 15 percent
- 6 of the population classified as obese. After the 1970s, these rates
- 7 began to climb. By 2006, 23.3 percent of Americans were
- 8 considered obese. In California, obesity rates have increased even
- 9 more, rising from 8.9 percent in 1984 to 25.5 percent in 2010.

1 Although no group has escaped the epidemic, ethnic minorities
2 and the poor are disproportionately affected.

3 (b) The rate of children who are overweight has also increased
4 dramatically in recent decades. After being relatively constant
5 from the 1960s to the 1970s, the prevalence of overweight children
6 has more than quadrupled among children between 6 and 11 years
7 of age and nearly tripled among those between 12 and 19 years of
8 age.

9 (c) The obesity epidemic is of particular concern because obesity
10 increases the risk of diabetes, heart disease, certain types of cancer,
11 arthritis, asthma, and breathing problems. Depending on their level
12 of obesity, from 60 percent to over 80 percent of obese adults have
13 type 2 diabetes, high blood cholesterol, high blood pressure, or
14 other related conditions. It has been reported that up to 60 percent
15 of obese children 5 to 10 years of age have early signs of heart
16 disease.

17 (d) Type 2 diabetes, previously only seen among adults, is now
18 increasing among children. If the current obesity trends are not
19 reversed, it is predicted that one in three children and nearly
20 one-half of Latino and African American children born in the year
21 2000 will develop type 2 diabetes in their lifetime. Research shows
22 that overweight children have a much greater chance of being
23 obese as adults, with all the health risks that entails.

24 (e) Overweight and obesity account for \$147 billion in health
25 care costs nationally, or 9 percent of all medical spending – with
26 half these costs paid publicly through the Medicare and Medicaid
27 programs.

28 (f) In 2006, overweight and obesity-related costs in California
29 were estimated at almost \$21 billion.

30 (g) There is overwhelming evidence of the link between obesity
31 and consumption of sweetened beverages such as soft drinks,
32 energy drinks, sweet teas, and sports drinks. California adults who
33 drink a soda or more per day are 27 percent more likely to be
34 overweight or obese, regardless of income or ethnicity.

35 (h) According to nutritional experts, sweetened beverages such
36 as soft drinks, energy drinks, sweet teas, and sport drinks offer
37 little or no nutritional value, but massive quantities of added sugars.
38 For example, a 20-ounce bottle of soda contains the equivalent of
39 approximately 17 teaspoons of sugar. Yet, the American Heart

1 Association recommends that Americans consume no more than
2 five to nine teaspoons of sugar per day.

3 (i) Research shows that almost one-half of the extra calories
4 Americans have been consuming since the 1970s could come from
5 soda, with the average American drinking nearly 50 gallons of
6 sweetened beverages a year, the equivalent of 39 pounds of extra
7 sugar every year.

8 (j) Americans are drinking more sweetened beverages than ever
9 before. From 1977 to 2002, Americans doubled the amount of
10 sweetened beverages they consumed. Currently, children and adult
11 Americans consume 172 and 175 calories respectively from
12 sweetened beverages a day. Children and adolescents now consume
13 10 to 15 percent of their daily caloric intake from sweetened
14 beverages.

15 (k) Research shows that 41 percent of California children 2 to
16 11 years of age and 62 percent of California teens 12 to 17 years
17 of age drink soda daily, and for every additional serving of
18 sweetened beverage that a child consumes a day, the likelihood of
19 the child becoming obese increases by 60 percent.

20 (l) Dental caries (tooth decay) is the most common chronic
21 childhood disease, experienced by more than two-thirds of
22 California's children. Children who frequently or excessively
23 consume beverages high in sugar are at increased risk for dental
24 caries. Untreated dental caries can lead to pain, infection, tooth
25 loss, and in severe cases, even death. It can slow normal growth
26 and development by restricting nutritional intake. Children who
27 are missing teeth may have chewing problems that limit their food
28 choices and result in nutritionally inadequate diets.

29 (m) It is the intent of the Legislature, by adopting the Sweetened
30 Beverage Tax Law and creating the Children's Health Promotion
31 Fund, to diminish the human and economic costs of obesity and
32 dental disease in California. This act is intended to discourage
33 excessive consumption of sweetened beverages by increasing the
34 price of these products and by creating a dedicated revenue source
35 for health programs designed to prevent and treat childhood obesity
36 and dental disease and reduce the burden of attendant health
37 conditions.

38 SEC. 2. Part 14.5 (commencing with Section 32600) is added
39 to Division 2 of the Revenue and Taxation Code, to read:

1 PART 14.5. SWEETENED BEVERAGE TAX LAW

2
3 32600. This part shall be known and may be cited as the
4 Sweetened Beverage Tax Law.

5 32601. For purposes of this part:

6 (a) "Beverage container" means any closed or sealed container
7 regardless of size or shape, including, without limitation, those
8 made of glass, metal, paper, plastic, or any other material or
9 combination of materials.

10 (b) "Bottled sweetened beverage" means a sweetened beverage
11 contained in a beverage container.

12 (c) "Caloric sweetener" means any caloric substance suitable
13 for human consumption that humans perceive as sweet and
14 includes, without limitation, sucrose, fructose, including high
15 fructose corn sweetener, glucose, other sugars, and fruit juice
16 concentrates. "Caloric" means a substance that adds calories to
17 the diet of a person who consumes that substance.

18 (d) "Concentrate" means a syrup, simple syrup, powder, or base
19 product containing caloric sweetener that is used for mixing,
20 compounding, or making sweetened beverages. For purposes of
21 this part, "concentrate" does not include any of the following:

22 (1) Any product that is solely used in preparing coffee or tea.

23 (2) Any product for consumption by infants and which is
24 commonly referred to as "infant formula."

25 (3) Any product for use for weight reduction.

26 (4) Any product containing milk or milk products or plant
27 proteins sources.

28 (5) Any frozen concentrate or freeze-dried concentrate to which
29 only water is added to produce a sweetened beverage containing
30 more than 10 percent natural fruit juice or more than 10 percent
31 natural fruit juice.

32 (6) Any product that is sold and is intended to be used for the
33 purpose of an individual consumer mixing a sweetened beverage.

34 (7) Medical food.

35 (8) Any product to which no caloric sweeteners have been
36 added.

37 (e) "Consumer" means a person who purchases a bottled
38 sweetened beverage or concentrate for a purpose other than resale
39 in the ordinary course of business.

40 (f) "Distribution" includes:

1 (1) The sale in this state of bottled sweetened beverages,
2 sweetened beverages, or concentrate to a person who will make a
3 subsequent retail sale.

4 (2) The receipt in this state of untaxed bottled sweetened
5 beverages, sweetened beverages, or concentrate by a retailer who
6 will make a subsequent retail sale.

7 (3) The sale in this state of untaxed bottled sweetened beverages,
8 sweetened beverage, or concentrate by a retailer to a consumer.

9 (4) The storage, use, or other consumption in this state of
10 untaxed bottled sweetened beverages, sweetened beverages, or
11 concentrate by a person.

12 (g) “Distributor” means any person who makes a distribution
13 of bottled sweetened beverages, sweetened beverages, or
14 concentrate in the state, whether or not that person also sells these
15 products to consumers.

16 (h) “Medical food” means medical food as defined in Section
17 109971 of the Health and Safety Code.

18 (i) “Milk” means natural liquid milk, regardless of animal source
19 or butterfat content, natural milk concentrate, whether or not
20 reconstituted, regardless of animal source, plant source, or butterfat
21 content, or dehydrated natural milk, whether or not reconstituted
22 and regardless of animal source or butter fat content.

23 (j) “Natural fruit juice” means the original liquid resulting from
24 the pressing of fruit, the liquid resulting from the reconstitution of
25 natural fruit juice concentrate, or the liquid resulting from the
26 restoration of water to dehydrated natural fruit juice.

27 (k) “Natural vegetable juice” means the original liquid resulting
28 from the pressing of vegetables, the liquid resulting from the
29 reconstitution of natural vegetable juice concentrate, or the liquid
30 resulting from the restoration of water to dehydrated natural
31 vegetable juice.

32 (l) “Nonalcoholic beverage” means any beverage not subject
33 to tax under Part 14 (commencing with Section 32001).

34 (m) “Person” means an individual, trust, firm, joint stock
35 company, business concern, business trust, receiver, trustee,
36 syndicate, social club, fraternal organization, estate, corporation,
37 including, but not limited to, a government corporation, partnership,
38 limited liability company, and association or any other group or
39 combination acting as a unit. “Person” also includes any city,
40 county, city and county, district, commission, the state, or any

1 department, agency, or political subdivision thereof, any interstate
2 body, and the United States and its agencies and instrumentalities
3 to the extent permitted by law.

4 (n) “Powder” or “base product” means a solid mixture of
5 ingredients used in making, mixing, or compounding sweetened
6 beverages by mixing the powder or base product with any one or
7 more other ingredients, including, without limitation, water, ice,
8 syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice,
9 or carbonation or other gas.

10 (o) “Retail sale” means the sale of bottled sweetened beverages
11 or sweetened beverages to a consumer.

12 (p) “Retailer” means any person who sells in this state bottled
13 sweetened beverages or sweetened beverages to a consumer,
14 whether or not that person is also a distributor as defined in this
15 section.

16 (q) “Sale” means the transfer of title or possession for
17 consideration in any manner or by any means whatever.

18 (r) “Simple syrup” means a mixture of sugar and water.

19 (s) (1) “Sweetened beverage” means any sweetened
20 nonalcoholic beverage sold for human consumption that contains
21 any added caloric sweeteners, including, but not limited to, the
22 following: soda water, ginger ale, root beer, all beverages
23 commonly referred to as cola, lime, lemon, lemon-lime, and other
24 flavored beverages, including any fruit or vegetable beverage
25 containing 10 percent or less natural fruit juice or natural vegetable
26 juice, and all other drinks and beverages commonly referred to as
27 “soda,” “soda pop,” and “soft drinks.”

28 (2) “Sweetened beverage” does not include any of the following:

29 (A) Any product sold in liquid form for consumption by infants,
30 which is commonly referred to as “infant formula.”

31 (B) Any product sold in liquid form for use for weight reduction.

32 (C) Water, to which no caloric sweeteners have been added.

33 (D) Any product containing milk or milk products or plant
34 protein sources.

35 (E) Medical food.

36 (F) Coffee or tea.

37 (t) “Syrup” means the liquid mixture of ingredients used in
38 making, mixing, or compounding sweetened beverages using one
39 or more other ingredients including, without limitation, water, ice,

1 a powder, simple syrup, fruits, vegetables, fruit juice, vegetable
2 juice, or carbonation or other gas.

3 32602. (a) There is hereby imposed an excise tax on every
4 distributor for the privilege of distributing bottled sweetened
5 beverages, sweetened beverages, and concentrate in the state,
6 calculated as follows:

7 (1) The tax on bottled sweetened beverages and sweetened
8 beverages distributed in this state shall be one cent (\$0.01) per
9 fluid ounce.

10 (2) The tax on concentrate distributed in this state shall be equal
11 to one cent (\$0.01) per fluid ounce of sweetened beverage to be
12 produced from that concentrate. For purposes of calculating the
13 tax for concentrate, the volume of sweetened beverage to be
14 produced from concentrate shall be the largest volume resulting
15 from use of the concentrate according to any manufacturer's
16 instructions.

17 (b) Every distributor subject to the tax imposed pursuant to
18 subdivision (a) shall separately state the amount of tax due to the
19 board by the distributor on the receipt, invoice, or other form of
20 accounting of the transaction given to the retailer.

21 32603. Each distributor shall include the following information
22 on each receipt, invoice, or other form of accounting for the
23 distribution of bottled sweetened beverages, sweetened beverages,
24 or concentrate:

- 25 (a) The name and address of the distributor.
- 26 (b) The name and address of the purchaser.
- 27 (c) The date of sale and invoice number.
- 28 (d) The kind, quantity, size, and capacity of packages of bottled
29 sweetened beverages, sweetened beverages, or concentrate sold.
- 30 (e) The amount of excise taxes due to the board from the
31 distributor on the sale of the bottled sweetened beverages,
32 sweetened beverages, or concentrate.
- 33 (f) Any other information as required by the board.

34 32604. There is exempt from the taxes imposed by this part
35 the distribution of bottled sweetened beverages, sweetened
36 beverages, or concentrate distributed by a distributor to:

- 37 (a) A distributor registered with the board under this part when
38 supported by a properly completed exemption certificate.
- 39 (b) To a person when, pursuant to the contract of sale, the bottled
40 sweetened beverages, sweetened beverages or concentrates are

1 required to shipped and are shipped to a point outside of this state
2 by the distributor by means of any of the following:

3 (1) Facilities operated by the distributor.

4 (2) Delivery by the distributor to a carrier, customs broker, or
5 forwarding agent, whether hired by the purchaser or not, for
6 shipment to the out-of-state point.

7 (c) To a person where the state is prohibited from taxing that
8 sale, use, or consumption under the Constitution or laws of the
9 United States or under the Constitution of this state.

10 32605. The exemption certificate to be provided by a distributor
11 to another distributor as required by subdivision (a) of Section
12 32604 shall consist of a statement that is signed under penalty of
13 perjury by a person with authority to bind the distributor. The
14 certificate shall be dated and include the distributor's name and
15 account number. A new certificate shall be given if any information
16 in the current certificate changes. The certificate may be included
17 as part of any business records normally used to document a sale
18 or distribution.

19 32606. A distributor who has paid a tax, either directly to the
20 state or to another distributor registered under this part, and makes
21 a subsequent distribution of bottled sweetened beverages,
22 sweetened beverages, or concentrate may claim a credit on its
23 return for the period in which the subsequent sale or distribution
24 occurs.

25 32607. The board shall administer and collect the tax imposed
26 by this part pursuant to the Fee Collection Procedures Law (Part
27 30 (commencing with Section 55001)). For purposes of this part,
28 the references in the Fee Collection Procedures Law to "fee" shall
29 include the tax imposed by this part and references to "feepayer"
30 shall include a person required to pay the tax imposed by this part.

31 32608. The board may prescribe, adopt, and enforce any
32 emergency regulations as necessary to implement this part. Any
33 emergency regulation prescribed, adopted, or enforced pursuant
34 to this section shall be adopted in accordance with Chapter 3.5
35 (commencing with Section 11340) of Part 1 of Division 3 of Title
36 2 of the Government Code, and, for purposes of that chapter,
37 including Section 11349.6 of the Government Code, the adoption
38 of the regulation is an emergency and shall be considered by the
39 Office of Administrative Law as necessary for the immediate

1 preservation of the public peace, health and safety, and general
2 welfare.

3 32609. The taxes imposed by this part are due and payable to
4 the board quarterly on or before the last day of the month next
5 succeeding each quarterly period.

6 32610. (a) On or before the last day of the month following
7 each quarterly period of three months, a return for the preceding
8 quarterly period shall be filed with the board.

9 (b) The board may prescribe those forms and reporting
10 requirements as are necessary to implement the tax, including, but
11 not limited to, information regarding the total amount of bottled
12 sweetened beverages, sweetened beverages, and concentrate sold
13 and the amount of tax due.

14 32611. (a) There is hereby created a trust fund in the State
15 Treasury called the Children’s Health Promotion Fund. The
16 Children’s Health Promotion Fund shall consist of all taxes,
17 interest, penalties, and other amounts collected pursuant to this
18 part, less refunds and reimbursement to the board for expenses
19 incurred in the administration and collection of the tax.

20 (b) All moneys in the Children’s Health Promotion Fund shall,
21 upon appropriation by the Legislature, be allocated for the purposes
22 of statewide childhood obesity prevention activities and programs
23 as follows:

24 (1) Twenty percent to the State Department of Public Health to
25 coordinate statewide childhood obesity prevention activities and
26 to fund state-level childhood obesity prevention and children’s
27 dental programs. This funding shall support programs that use
28 educational, environmental, policy, and other public health
29 approaches that achieve the following goals: improve access to
30 and consumption of healthy, safe, and affordable foods and
31 beverages; reduce access to and consumption of calorie-dense,
32 nutrient-poor foods; encourage physical activity; decrease sedentary
33 behavior; and raise awareness about the importance of nutrition
34 and physical activity to childhood obesity prevention.

35 (2) Thirty-five percent for community-based childhood obesity
36 prevention programs. This funding shall support programs that
37 use educational, environmental, policy, and other public health
38 approaches that achieve the following goals: improve access to
39 and consumption of healthy, safe, and affordable foods and
40 beverages; reduce access to and consumption of calorie-dense,

1 nutrient-poor foods; encourage physical activity; decrease sedentary
2 behavior; and raise awareness about the importance of nutrition
3 and physical activity to childhood obesity prevention. The State
4 Department of Public Health shall be responsible for the
5 distribution of these funds to community-based organizations and
6 to local health departments, with priority given to counties that
7 have established childhood obesity prevention coalitions to build
8 political support for programs.

9 (3) Ten percent to evidence-based prevention, early recognition,
10 monitoring, and weight management intervention activities in the
11 medical setting. The State Department of Public Health shall be
12 responsible for identifying activities and allocating these funds.

13 (4) Thirty-five percent to elementary and secondary schools for
14 educational, environmental, policy and other public health
15 approaches that promote nutrition and physical activity. The
16 approaches funded pursuant to this paragraph can include
17 improving or building school recreational facilities that are used
18 for recess and physical education; providing continuing education
19 training for physical education teachers; hiring qualified physical
20 education teachers; implementing Safe Routes to Schools
21 programs; improving the quality and nutrition of school breakfasts,
22 lunches, and snacks; ensuring free, clean drinking water access
23 throughout the schoolday; and incorporating practical nutrition
24 education into the curriculum. The Superintendent of Public
25 Instruction is responsible for the allocation and distribution of
26 these funds.

27 (c) All moneys in the Children’s Health Promotion Fund shall
28 be expended only for the purposes expressed in this chapter, and
29 shall be used only to supplement existing levels of service and not
30 to supplant current federal, state, or local funding for existing levels
31 of service.

32 (d) The Director of the State Department of Public Health and
33 the Superintendent of Public Instruction are hereby authorized to
34 make such rules and regulations, and provide such procedural
35 measures, as shall bring into effect the purposes of this section.
36 The rules and regulations may provide for specific programs to be
37 funded consistent with the allocation of funds set forth above.

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O