

**ASSEMBLY BILL**

**No. 669**

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**Introduced by Assembly Member Monning**

February 17, 2011

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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