SB 622, as amended, 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, on and after July 1, 2014, and until July 1, 2024, impose a tax on every distributor, as defined, for the privilege of distributing in this state bottled sweetened beverages, at a rate of $0.01 per fluid ounce and for the privilege of distributing concentrates in this state, either as concentrate or as sweetened beverages derived from that concentrate, at the rate of $0.01 per fluid ounce of sweetened beverage to be produced from concentrate. 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 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 and to provide funds to either the University of California or the California State University to conduct a specified report. This bill would also authorize the State Public Health Officer 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 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.


being enacted as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The prevalence of obesity in the United States has increased dramatically over the past 30 years. From the 1960s to the late 1970s, the prevalence was relatively constant, with about 15
percent of the population classified as obese. After the 1970s, these
rates began to climb. In California, obesity rates have increased
even more, rising from 8.9 percent in 1984 to 23.8 percent in 2011.
Although no group has escaped the epidemic, low income and
communities of color are disproportionately affected.

(b) The rate of children who are overweight has also increased
dramatically in recent decades. After being relatively constant
from the 1960s to the 1970s, the prevalence of overweight children
has more than quadrupled among children between 6 and 11 years
of age and nearly tripled among those between 12 and 19 years of
age. In California in 2010, 38 percent of children in grades 5, 7,
and 9 were overweight or obese. Thirty-one of California’s 58
counties experienced an increase in childhood overweight from
2005 to 2010.

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

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

(e) Overweight and obesity account for $147 billion in health
care costs nationally, or 9 percent of all medical spending—with
half these costs paid publicly through the Medicare and Medicaid
programs. Medical costs associated with obesity are estimated at
$147 billion; the medical costs for people who are obese are
dramatically higher than those of normal weight.

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

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

(h) According to nutritional experts, sweetened beverages, such as soft drinks, energy drinks, sweet teas, and sport drinks, offer little or no nutritional value, but massive quantities of added sugars. A 20-ounce bottle of soda contains the equivalent of approximately 16 teaspoons of sugar. Yet, the American Heart Association recommends that Americans consume no more than five to nine teaspoons of sugar per day.

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

(j) Though sugar sweetened beverage consumption is declining slightly as people learn about their harmful health effects, Americans are still consuming twice as much of these products as they did in the 1970’s. Children and adolescents consume 173 calories per day of sugary drinks; adults consume 178 calories per day of sugary drinks. Children and adolescents consume 10 to 15 percent of their daily caloric intake from sweetened beverages.

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

(l) Sugary drinks are a unique contributor to excess caloric consumption. A large body of research shows that calories from sugary drinks do not satisfy hunger the way calories from solid food or fat or protein-containing beverages such as those containing milk and plant-based proteins. As a result, sugary beverages tend to add to the calories people consume rather than replace them.

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

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

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

PART 14.5. SWEETENED BEVERAGE TAX LAW

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

32601. For purposes of this part:

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

(b) “Bottled sweetened beverage” means a sweetened beverage contained in a beverage container.

(c) “Beverage dispensing machine” means a device that mixes concentrate with any one or more other ingredients and dispenses the resulting mixture into an open container as a ready-to-drink beverage.

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

(e) “Concentrate” means a syrup, powder, or base product that is used for mixing, compounding, or making sweetened beverages in a beverage dispensing machine. For purposes of this part, “concentrate” does not include any of the following:

(1) Any product that is solely used in preparing coffee or tea.
(2) Any product for consumption by infants and which is commonly referred to as “infant formula.”

(3) Any product for use for weight reduction.

(4) Milk or milk products.

(5) Any frozen concentrate or freeze-dried concentrate to which only water is added to produce a sweetened beverage containing more than 50 percent natural fruit juice or more than 50 percent natural vegetable juice or more than 50 percent combined natural fruit juice and natural vegetable juice.

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

(7) Medical food.

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

(f) “Consumer” means a person who purchases a bottled sweetened beverage or concentrate for a purpose other than resale in the ordinary course of business.

(g) “Distribution” includes:

(1) The sale of bottled sweetened beverages or concentrate to a retailer.

(2) The receipt of untaxed bottled sweetened beverages or concentrate in this state from an unregistered out-of-state distributor by a retailer.

(3) The retail sale of untaxed bottled sweetened beverages, sweetened beverages, or concentrate in this state.

(4) The use or consumption of untaxed bottled sweetened beverages or concentrate in this state by a distributor or retailer. For purposes of this paragraph, “use or consumption” includes the exercise of any right or power over bottled sweetened beverages or concentrate incident to the ownership thereof, except that it does not include the sale of that property or the keeping or retention thereof by a distributor or retailer for the purpose of sale.

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

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

(j) “Milk” means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not
reconstituted, regardless of animal source, plant source, or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content.

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

(l) “Natural vegetable juice” means the original liquid resulting from the pressing of vegetables, the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural vegetable juice.

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

(n) “Person” means an individual, trust, firm, joint stock company, business concern, business trust, receiver, trustee, syndicate, social club, fraternal organization, estate, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association or any other group or combination acting as a unit. “Person” also includes any city, county, city and county, district, commission, the state, or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(o) “Powder” or “base product” means a solid or liquid mixture of ingredients with added caloric sweetener used in making, mixing, or compounding sweetened beverages by mixing the powder or base product with any one or more other ingredients, including, without limitation, water, ice, syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or other gas.

(p) “Retail sale” means the sale of sweetened beverages to a consumer.

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

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

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

(t) (1) “Sweetened beverage” means any sweetened nonalcoholic beverage sold for human consumption that has caloric
sweeteners and contains more than 25 calories per 12 ounces, including, but not limited to, the following: soda water, ginger ale, root beer, all beverages commonly referred to as cola, lime, lemon, lemon-lime, and other flavored beverages, including any fruit or vegetable beverage containing less than 50 percent natural fruit juice or natural vegetable juice or combined natural fruit juice and natural vegetable juice, and all other drinks and beverages commonly referred to as “soda,” “soda pop,” “soft drinks,” “sports drinks,” “energy drinks,” “juice drinks,” “ice teas,” and “vitamin fortified waters.”

(2) “Sweetened beverage” does not include any of the following:
(A) Any product sold in liquid form for consumption by infants, which is commonly referred to as “infant formula” or any product whose purpose is infant rehydration.
(B) Any product sold in liquid form for use for weight reduction.
(C) Water, to which no caloric sweeteners have been added.
(D) Milk or milk products.
(E) Medical food.
(F) Any sweetened beverage containing 50 percent or more of natural fruit juice or natural vegetable juice or combined natural fruit juice and natural vegetable juice.
(u) “Syrup” means the liquid mixture of ingredients used in making, mixing, or compounding sweetened beverages using one or more other ingredients including, without limitation, water, ice, a powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or other gas.

32602. There is hereby imposed an excise tax on every distributor for the privilege of distributing bottled sweetened beverages and concentrate in the state, calculated as follows:
(a) The tax on bottled sweetened beverages distributed in this state shall be one cent ($0.01) per fluid ounce.
(b) The tax on concentrates distributed in this state either as concentrate or as a sweetened beverage derived from that concentrate, shall be equal to one cent ($0.01) per fluid ounce of sweetened beverage produced from that concentrate. For purposes of calculating the tax for concentrate, the volume of sweetened beverage to be produced from concentrate shall be the largest volume resulting from use of the concentrate according to any manufacturer’s instructions.
32603. Each distributor shall include the following information on each receipt, invoice, or other form of accounting for the distribution of bottled sweetened beverages or concentrate:
(a) The name and address of the distributor.
(b) The name and address of the purchaser.
(c) The date of sale and invoice number.
(d) The kind, quantity, size, and capacity of packages of bottled sweetened beverages, sweetened beverages, or concentrate sold.
(e) The amount of excise taxes due to the board from the distributor on the sale of the bottled sweetened beverages or concentrate.
(f) Any other information as required by the board.

32604. There is exempt from the taxes imposed by this part the distribution of bottled sweetened beverages or concentrate distributed by a distributor to:
(a) A distributor registered with the board under this part when supported by a properly completed exemption certificate.
(b) To a person when, pursuant to the contract of sale, the bottled sweetened beverages or concentrates are required to be shipped and are shipped to a point outside of this state by the distributor by means of any of the following:
(1) Facilities operated by the distributor.
(2) Delivery by the distributor to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point.
(c) To a person where the state is prohibited from taxing that sale, use, or consumption under the Constitution or laws of the United States or under the Constitution of this state.

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

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

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

32608. (a) The board may prescribe, adopt, and enforce
regulations relating to the administration and enforcement of this
part, including, but not limited to, collections, reporting, refunds,
and appeals.
(b) The board may prescribe, adopt, and enforce any emergency
regulations as necessary to implement this part. Any emergency
regulation prescribed, adopted, or enforced pursuant to this section
shall be adopted in accordance with Chapter 3.5 (commencing
with Section 11340) of Part 1 of Division 3 of Title 2 of the
Government Code, and, for purposes of that chapter, including
Section 11349.6 of the Government Code, the adoption of the
regulation is an emergency and shall be considered by the Office
of Administrative Law as necessary for the immediate preservation
of the public peace, health and safety, and general welfare.

32609. The taxes imposed by this part are due and payable to
the board on or before the last day of the month following each
calendar quarter.

32610. (a) On or before the last day of the month following
each calendar quarter of three months, a return for the preceding
calendar quarter shall be filed using electronic media with the
board.
(b) The board may prescribe those forms and reporting
requirements as are necessary to implement the tax, including, but
not limited to, information regarding the total amount of bottled
sweetened beverages and concentrate sold and the amount of tax
due.
(c) Returns shall be authenticated in a form or pursuant to
methods as may be prescribed by the board.

32610.5. Every person required to pay the tax imposed under
this part shall register with the board. Every application for
registration shall be made upon a form prescribed by the board
and shall set forth the name under which the applicant transacts
or intends to transact business, the location of his or her place or places of business, and such other information as the board may require. An application for an account shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

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

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

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

(2) Thirty-five percent for evidence-based community-based childhood obesity prevention programs. This funding shall support programs that use educational, environmental, policy, and other public health approaches that achieve the following goals: improve access to and consumption of healthy, safe, and affordable foods and beverages; reduce access to and consumption of calorie-dense, nutrient-poor foods; encourage physical activity; decrease sedentary behavior; and raise awareness about the importance of nutrition and physical activity to childhood obesity prevention. The State Department of Public Health shall be responsible for the distribution of these funds to local health departments that may contract with community-based organizations and to local health departments, with priority given to counties that have the highest rates of childhood obesity.
(3) Ten percent to evidence-based prevention, early recognition, monitoring, and weight management intervention activities in the medical setting. The State Department of Public Health shall be responsible for identifying activities and allocating these funds.

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

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

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

32612. (a) On or before July 1, 2022, the University of California or the California State University, as determined by the State Department of Public Health, shall provide a report to the Legislature and all relevant standing committees that examines the process and outcome performance of the Sweetened Beverage Tax Law that includes, but is not limited to, a review of how moneys in the Children’s Health Promotion Fund were allocated annually, annual and longitudinal data on childhood obesity prevalence and incidence rates, data on childhood diabetes and incidence rates, and longitudinal information on sweetened beverage consumption rates across the state population.
(b) Notwithstanding paragraphs (1) to (4), inclusive, of subdivision (b) of Section 32611, ____ dollars ($____) shall, upon appropriation by the Legislature from the Children’s Health Promotion Fund, be allocated to the State Department of Public Health for allocation to either the University of California or the California State University, as determined by the State Department of Public Health, for the report required by subdivision (a).

(c) A report to the Legislature pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

32612. This part shall become operative on July 1, 2014.

32613. This part shall remain in effect only until July 1, 2024, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2024, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.