

DRAFT



STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	<b>12/04/00</b>	Bill No:	<b>SB 19</b>
Tax:	<b>Sales and Use</b>	Author:	<b>Escutia, et al.</b>
Board Position:	<b>Neutral</b>	Related Bills:	

### BILL SUMMARY

This bill, among other provisions, would provide that all sales and use tax revenue derived from retail sales of carbonated beverages be allocated on a quarterly basis to the Pupil Health and Achievement Trust Fund, which this bill would create.

### ANALYSIS

#### Current Law

Under existing law, a tax is imposed on the sales price or gross receipts, as defined in Sections 6011 and 6012 of the Revenue and Taxation Code, respectively, of tangible personal property sold in this state.

Under existing law, the disposition of state sales and use tax revenues is governed by Revenue and Taxation Code Section 7102. That section currently provides that sales and use tax revenues are transferred in the following manner:

- 1) To the Public Transportation Account:
  - a) All revenues, less refunds, derived under this part at the 4  $\frac{3}{4}$  percent rate, including the imposition of sales and use taxes with respect to the sale or use of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel had been exempt from the sales and use taxes.
  - b) All revenues, less refunds, at the 4  $\frac{3}{4}$  percent rate resulting from increasing after December 31, 1989, the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on sales of gasoline. The gasoline tax has increased \$0.09 per gallon since December 31, 1989.
  - c) All revenues, less refunds, at the 4  $\frac{3}{4}$  percent rate from the sales and use tax imposed upon diesel fuel, liquefied petroleum gas and natural gas.
- 2) All revenues, less refunds, at the  $\frac{1}{2}$  percent rate shall be transferred to the Sales Tax Account of the Local Revenue Fund for allocation to cities and counties (Section 6051.2 and 6201.2).
- 3) All revenues, less refunds, at the  $\frac{1}{2}$  percent rate shall be transferred to the Public Safety Account in the Local Public Safety Fund (Section 35 of Article XIII of the California Constitution).

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## 4) To the Traffic Congestion Relief Fund:

- a) All revenues, less refunds, at the 5 percent rate, resulting from the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on sales of gasoline, less the amount already transferred to the Public Transportation Account.
- b) All revenues, less refunds, at the 5 percent rate resulting from the rate of federal motor vehicle fuel tax imposed pursuant to Section 4081 of Title 26 of the Internal Revenue Code.
- c) All revenues, less refunds, at the 5 percent rate, with respect to the sale, storage, use, or other consumption of motor vehicle fuel, less any amounts already transferred to the Public Transportation Account or the Traffic Congestion Relief Fund.

## 5) The balance to the General Fund.

The revenues that are currently allocated to the Traffic Congestion Relief Fund are not allowed to exceed \$125 million in any quarter. Additionally, the revenues currently allocated to the Traffic Congestion Relief Fund are scheduled to discontinue as of June 30, 2001. After that date, the revenues currently transferred to the Traffic Congestion Relief Fund shall be allocated to the General Fund.

**Proposed Law**

This bill would amend Section 7102 to the Sales and Use Tax Law to require that all revenues, less refunds, derived from the retail sales of carbonated beverages shall be transferred quarterly to the Pupil Health and Achievement Trust Fund, which this bill would create.

This bill would also make various changes to the Education Code. Among its provisions, this bill would accomplish the following:

- Require the State Department of Education to create a position to oversee physical education and activities in schools and enforce relevant laws and regulations.
- Require every school to provide a safe place and method for any pupil with diabetes to test his or her blood glucose level and receive insulin injections, and that there are staff members competent in testing blood glucose levels, recognizing and treating hypoglycemia and hyperglycemia, and administering insulin and glucagon injections.
- Require the sale of all foods on school grounds to be approved by the school food service program. Additionally, restrictions would be imposed on the sale of candy and soft drinks on campus.
- Increase the reimbursement to school districts for certain costs associated with free and reduced-price meals to \$0.26 per meal.
- Authorize a school district to convene a Child Nutrition and Physical Activity Advisory Committee for the purpose of adopting a school district policy on nutrition

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and physical activity. Also, the State Department of Education would be required to provide a \$10,000 grant to a school district that develops and adopts a policy by December 31, 2002.

- Require the Superintendent of Public Instruction to supervise the implementation of certain provisions that would be enacted by this bill by monitoring schools every 2 years and to investigate acts of alleged noncompliance.

Amounts transferred to the Pupil Health and Achievement Trust Fund would be appropriated to the State Department of Education for the purpose of implementing the various provisions of this bill.

### Background

One similar bill was introduced during the 2000 Legislative Session. SB 1320 (Escutia) provided for many similar provisions relating to improving nutrition for students and providing blood glucose testing for students with diabetes on campus. SB 1320 also contained provisions that would have allocated sales tax revenues from the retail sale of carbonated beverages to the Pupil Health and Achievement Trust Fund. The provisions relating to improving nutrition for students on campus and allocating sales tax revenue from the retail sale of carbonated beverages were amended from the bill prior to the bill being heard in the Senate Appropriations Committee. Due to the removal of the Revenue and Taxation Code provisions, SB 1320 was not presented to the Board for a position. The enrolled version of SB 1320, which provided blood glucose testing for students with diabetes on campus, was vetoed by the Governor due to the costs associated with the bill that were not included in the 2000 Budget Act.

Other measures have been introduced in the past providing for allocation of sales tax revenue to specific funds. Generally, these measures have been specific to the sales tax revenue from the retail sales of gasoline. One such measure that was successful last year earmarked the sales tax on gasoline for transportation purposes. Assembly Bill 2928 (Ch. 91, Stats. 2000) requires certain sales and use tax revenues generated from the sale of gasoline and diesel fuel to be transferred to Traffic Congestion Relief Fund and the Transportation Investment Fund for the purpose of funding transportation projects in the state.

### COMMENTS

1. **Sponsor and Purpose.** According to Senator Escutia's office, this bill is sponsored by the Center for Public Health Advocacy to help improve nutrition for students on campus.
2. **Definition of carbonated beverages.** This bill would require that the sales and use tax revenue generated from the retail sale of carbonated beverages be transferred quarterly to the Pupil Health and Achievement Trust Fund. This bill does not provide a definition of carbonated beverages that are intended to be covered by this bill. It is assumed that carbonated beverages include pre-packaged carbonated beverages in addition to carbonated beverages dispensed by a fountain. It is also assumed that carbonated alcoholic beverages are not included. It is recommended that a definition of carbonated beverages be included in the bill.

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**3. Technical amendment for Section 7102 of the Revenue and Taxation Code.**

This bill adds paragraph (11) to subdivision (a) to require the allocation of revenue from the retail sale of carbonated beverages. Current law already contains paragraph (11) of subdivision (a), as added by AB 2928 (Ch. 91, Stats. 2000). Paragraph (11) of subdivision (a) in current law is scheduled to be repealed as of June 30, 2001. If this bill is enacted prior to June 30, 2001, this would chapter out the current provisions provided by paragraph (11) of subdivision (a). It is recommended that paragraph (11) of subdivision (a) be renumbered as paragraph (14) of subdivision (a).

**4. Role of the Board of Equalization.** This bill would require that all sales and use tax revenues from the retail sale of carbonated beverages be transferred quarterly to the Pupil Health and Achievement Trust Fund. The Board would be responsible for determining the amount of revenue that must be transferred to the Pupil Health and Achievement Trust Fund. Retailer's that sell carbonated beverages do not separately report their carbonated beverage sales to the Board. Therefore, the Board would be required to estimate the amount of retail sales of carbonated beverages. For clarification, it is recommended that the bill be amended to read:

"All revenues, less refunds, derived under this part from retail sales of carbonated beverages shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly, commencing with the revenues due October 1, 2001, to the Pupil Health and Achievement Trust Fund, which is hereby created."

**COST ESTIMATE**

Some costs would be incurred in preparing the estimates required by this bill. These costs are expected to be absorbable.

**REVENUE ESTIMATE****Background, Methodology, and Assumptions**

This bill would create the Pupil Health and Achievement Trust Fund to which net state sales and use tax revenues from the retail sales of carbonated beverages would be transferred from the General Fund. The bill provides that the revenue would be transferred quarterly. Additionally, the estimates of revenue under this bill will be based on taxable transactions that occur during a calendar year, and transfers required under this proposal shall be made during the fiscal year that commences during that same calendar year.

We assume that the definition of carbonated beverage includes not only pre-packaged soft drinks but also soft drinks from restaurant fountain sales. We further assume that the definition of carbonated beverages does not include carbonated alcoholic beverages.

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According to Beverage World, a trade organization that provides industry consumption data, total sales of carbonated beverages in the US for 1999 amounted to \$54.8 billion.

California comprises 12 percent of total US population; therefore, the total sales of carbonated beverages in California in 1999 is estimated to be \$6.6 billion (\$54.8 billion x .12).

### Revenue Summary

For the calendar year 2001, the state sales and use tax rate is 4.75 percent. This proposal would transfer an estimated \$313.5 million (\$6.6 billion x .0475) in tax revenue from the General Fund to the Pupil Health and Achievement Trust Fund.

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