



~~17 APR 30 PM 4:12~~ Councilmembers Dan Kalb, Lynette McElhaney, & Annie Campbell Washington
CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Agenda Memorandum

To: Rules & Legislation Committee

From: Councilmembers Dan Kalb and Lynette Gibson McElhaney and Vice Mayor Annie Campbell Washington

Date: March 30, 2017

Subject: Support of AB 43: State Incarceration Prevention Fund

Colleagues on the City Council and Members of the Public,

With our Resolution of Support for AB 43 (Thurmond), we are submitting the attached Fact Sheet and text of the bill.

Respectfully submitted,

Dan Kalb, Councilmember

Lynette Gibson McElhaney, Councilmember

Annie Campbell Washington, Vice Mayor



AB 43 – State Incarceration Prevention Fund

IN BRIEF

AB 43 provides a revenue stream for large scale programs that are known to prevent incarceration such as universal preschool and after-school programs. It does this by re-directing money generated by private companies that profit from the prison industrial complex into a newly-created state fund for the purpose of keeping individuals from being incarcerated in the first place.

BACKGROUND

California spends huge amounts to incarcerate prisoners. Current active contracts between for-profit companies and the California Department of Corrections and Rehabilitation total approximately \$4.5 billion. In comparison, the state spends relatively little on programs known to prevent incarceration.

Attempts to invest heavily in incarceration prevention programs have been stymied by budget concerns. This was made all the more clear given this year's proposed "pause" of the planned increase in preschool slots. Without a permanent non-budgetary funding source, these efforts are unlikely to experience continued success.

Companies continue to profit as a result of high state incarceration rates. These for-profit companies provide necessary goods and services to state facilities, often at a markup. In effect, taxpayers are stuck footing the bill, enabling companies to see large profits for goods and services due to California's prison population.

SOLUTION

Assess a tax on companies that contract with state prison facilities to provide goods or services. The tax targets those companies that profit financially from an individual's incarceration and causes those companies to give revenue back to the state that will be used to prevent and/or reduce future incarceration. Funds collected will be deposited into the State Incarceration Prevention Fund in order to provide prevention services.

This tax is structured to come from company revenue and is not simply passed along to the state through increased bid prices. Language has been included that

1) requires contracting companies to certify under penalty of perjury that the cost is not being passed along to the state, 2) calls for oversight and potential audit by the Board of Equalization and 3) institutes a civil fine for companies found to be violators. Fines too will be deposited into the fund, further increasing the amount of available money for incarceration prevention.

SUPPORT

The Anti-Recidivism Coalition
First 5 Association of California
Partnership for Children and Youth
SEIU California

FOR MORE INFORMATION

Michael Lucien, Office of Asm. Tony Thurmond
916-319-2015 | Michael.lucien@asm.ca.gov

ASSEMBLY BILL

No. 43

Introduced by Assembly Member Thurmond

December 5, 2016

An act to add Part 28 (commencing with Section 53001) to Division 2 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 43, as introduced, Thurmond. Taxation: prison contracts: goods and services.

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 the privilege of contracting with a state prison, the Department of Corrections and Rehabilitation, or the Department of General Services to provide a state prison with goods and services in the amount of __ percent of the final contract price for contracts entered into on or after January 1, 2018. The bill would require all amounts paid, less refunds, to be deposited into the State Incarceration Prevention Fund, which this bill would establish in the State Treasury, and would continuously appropriate those moneys for the purposes of providing services to prevent people from being incarcerated and providing early intervention programs, less the amount needed to reimburse the State Board of Equalization and the Attorney General for costs incurred in administering these provisions. The bill would prohibit these taxes from being passed through to the state by way of higher prices for the goods or services in the contract, and would

require the taxpayer to certify under penalty of perjury that they have not passed on this tax to the state. The bill would require the taxpayer to pay a penalty if it fails to comply with these provisions. The bill would authorize the Attorney General to monitor and investigate taxpayers to ensure that they are not passing this tax through to the state, and would require the State Board of Equalization to administer the tax imposed by this part pursuant to the Fee Collection Procedures Law.

By expanding the application of the Fee Collection Procedures Law, ~~the violation of which is a crime, and by expanding the scope of the~~ crime of perjury, this bill imposes a state-mandated local program.

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: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Part 28 (commencing with Section 53001) is
2 added to Division 2 of the Revenue and Taxation Code, to read:

3
4 PART 28. STATE INCARCERATION PREVENTION TAX

5
6 53001. For contracts entered into on or after January 1, 2018,
7 there is hereby imposed a tax on the privilege of contracting with
8 a state prison, the Department of Corrections and Rehabilitation,
9 or the Department of General Services to provide a state prison
10 with goods and services in the amount of _____ percent of the final
11 contract price.

12 53002. For the purposes of this part, "taxpayer" means a person
13 subject to the tax imposed by this part.

14 53003. (a) The State Incarceration Prevention Fund is hereby
15 created in the State Treasury.

16 (b) A state prison, the Department of Corrections and
17 Rehabilitation, or the Department of General Services shall collect
18 the taxes imposed pursuant to Section 53001 at the time a payment
19 is made on a contract for goods and services for a state prison,

1 shall remit the amounts collected to the board, and shall file a
2 return with the board on or before the last day of the month
3 following each quarterly calendar period. The board shall transmit
4 the payments, less refunds, to the State Treasury to be deposited
5 into the State Incarceration Prevention Fund.

6 (c) Notwithstanding Section 13340 of the Government Code,
7 all amounts deposited into the State Incarceration Prevention Fund
8 shall be continuously appropriated without regard to fiscal years
9 to the following:

10 ~~(1) The board and the Attorney General for reimbursement of~~
11 their costs for administering this part.

12 (2) The remainder to _____ for the purposes of providing services
13 to prevent people from being incarcerated and providing early
14 intervention programs.

15 53004. (a) The board shall administer and collect the tax
16 imposed by this part pursuant to the Fee Collection Procedures
17 Law (Part 30 (commencing with Section 55001)). For the purposes
18 of this part, the references in the Fee Collection Procedures Law
19 to “fee” shall include the tax imposed by this part, and references
20 to “feepayer” shall include any taxpayer.

21 (b) Chapter 3.5 (commencing with Section 11340) of Part 1 of
22 Division 3 of Title 2 of the Government Code shall not apply to
23 any standard, criterion, procedure, determination, rule, notice, or
24 guideline established or issued by the board or the Attorney General
25 to implement the purposes of this part.

26 53005. (a) The tax imposed by this part shall not be passed
27 through to the state by way of higher prices for the goods or
28 services in the contract.

29 (b) A taxpayer shall certify under penalty of perjury that the tax
30 imposed by this part was not passed through to the state by way
31 of higher prices for the goods and services in the contract.

32 (c) The Attorney General may monitor and, if necessary,
33 investigate any instance where a taxpayer has passed or attempted
34 to pass the tax through to the state by using the tax as a pretext to
35 materially raise prices.

36 (d) Any taxpayer that fails to comply with this section shall pay
37 a penalty in an amount not to exceed _____ dollars (\$_____) for each
38 instance the taxpayer fails to comply with this section.

39 SEC. 2. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

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

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DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS DAN KALB AND LYNETTE GIBSON
MCELHANEY AND VICE MAYOR ANNIE CAMPBELL WASHINGTON

**RESOLUTION IN SUPPORT OF ASSEMBLY BILL 43 (THURMOND) TO
CREATE A STATE INCARCERATION PREVENTION FUND BY
ASSESSING A TAX ON FOR-PROFIT COMPANIES THAT CONTRACT TO
DO BUSINESS WITH A STATE PRISON OR THE CA DEPARTMENT OF
CORRECTIONS OR THE DEPARTMENT OF GENERAL SERVICES TO
PROVIDE A STATE PRISON WITH A GOOD OR SERVICE**

WHEREAS, California spends huge sums to incarcerate prisoners, for which there is a multi-billion dollar for-profit industry, but comparatively little to prevent incarceration; and

WHEREAS, there is a great need for ongoing funding for large scale programs known to prevent incarceration, such as universal preschool and after-school programs; and

WHEREAS, Assembly Bill (AB) 43 (Thurmond) would establish a tax on companies that contract with state prison facilities to provide goods or services, the funds of which would be deposited into the State Incarceration Prevention Fund in order to provide prevention services; and

WHEREAS, AB 43 prohibits the tax it imposes from being passed onto the state by companies; and

RESOLVED: That the Oakland City Council hereby endorses AB 43 (Thurmond) and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

**AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY,
GUILLÉN, KALB, KAPLAN, AND PRESIDENT REID**

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

**LATONDA SIMMONS
City Clerk and Clerk of the
Council of the City of Oakland,
California**