

CONCURRENCE IN SENATE AMENDMENTS

AB 1633 (Haney)

As Amended August 27, 2026

2/3 vote. Tax Levy

SUMMARY

Enacts the Private Detention Facility Tax Law, which imposes, beginning January 1, 2027, an annual tax upon all "private detention facility operators" equal to 50% of the operator's gross receipts derived from the operation of each "private detention facility" in California.

Senate Amendments

- 1) Add co-authors.
- 2) Impose the tax on a private detention facility operator's gross income, as defined, instead of gross receipts.
- 3) Decrease the rate of tax from 50% to 25%.
- 4) Delay implementation from January 1, 2027, to July 1, 2028.
- 5) Provide that the tax applies each July 1st on a fiscal year basis for the previous 12-month period ending June 30th.
- 6) Set forth payment deadlines, return and registration requirements, and direct the California Department of Tax & Fee Administration (CDTFA) to authenticate returns and registration.
- 7) Add chaptering-out language to ensure this bill and AB 2465 (Ortega) do not create duplicative Funds if both bills are signed into law.

COMMENTS

- 1) *Prior attempts to ban private prisons:* Since Donald Trump first took office in 2017, the Legislature has responded to both Trump administrations' aggressive immigration tactics by enacting bills that prohibit state and local governments from contracting for immigration detention centers, require the Attorney General to develop and disseminate guidance for state and local agencies in their interactions with immigration enforcement agents, and require schools and daycares to restrict federal agents' access to their campuses, among numerous other efforts. While some of California's legislation in response to the Trump Administration's immigration enforcement has withstood legal scrutiny, California has not always been successful. In 2019, the Legislature enacted AB 32 (Bonta), Chapter 739, Statutes of 2019, which prohibited privately owned detention facilities from operating in California. The Trump Administration challenged the new statute and after a series of hearings and appeals, the state requested an en banc review of the case before the Ninth Circuit. In that review, the court held that the statute likely violated the Supremacy Clause of the United States Constitution. *Geo Group, Inc. v. Newsom*, 50 F.4th 745 (2022).

The Ninth Circuit held that AB 32 both improperly dictated who the federal government could contract with in order to carry out its obligations and frustrated the ability of their proxies to function in California so as to create an obstacle for the federal government to

engage in immigration detention. Therefore, California's attempt to ban private detention facilities in the state amounted to unconstitutional control of the federal government and discrimination against those who contract with the federal government by the state in violation of the Supremacy Clause.

- 2) *Doctrine of intergovernmental immunity*: The Supremacy Clause of the Constitution has also been interpreted to impose limits on the extent to which the state and federal governments can encroach on each other's sovereignty. Since 1819, the Supreme Court has held that states cannot directly tax the federal government or its instrumentalities. *McCulloch v. Maryland*, 17 U.S. 316 (1819). The Supreme Court has further interpreted the Supremacy Clause to, in part, prohibit the states from "interfering with or controlling the operations of the Federal Government" but a law that indirectly imposes a cost on the federal government may be constitutional "so long as the law imposes those costs in a neutral, nondiscriminatory way." *United States v. Washington*, 596 U.S. 832, 838-39 (2022). While otherwise generally applicable sales and property taxes paid by federal government contractors have survived judicial review, the targeted excise tax proposed by this bill may be challenged as discriminatory and, thus, unconstitutional.

Proponents argue that this bill is distinguishable from AB 32 because it does not *prohibit* private detention facilities in California, but instead taxes the revenues generated by their operation to partially offset the resulting negative impacts on California immigrant communities.

- 3) *Excise taxes*: The first excise tax levied in the U.S. was on the manufacture of whiskey in 1791. The tax was unpopular, famously sparking insurrectionary activities among Western Pennsylvania farmers, and only survived until 1802. In the early years of the Republic, excise taxes served as a revenue tool related to wars and economic downturns. As late as 1934, during the Great Depression, excise tax revenues made up almost one-half of the federal government's total tax revenue and generated three times more than the individual income tax. Historically, excise taxes have been levied to raise general fund revenues because the categories of products subject to tax were easy to count, which made administration of the tax simple and cheap. Sales taxes, for example, are based on a retailer's gross receipts attributable to sales of tangible personal property (TPP).

More recently, however, excise taxes have been used to try to deter (or even to completely eliminate) certain types of consumption. These taxes are often referred to as a "Pigouvian tax" when the tax is imposed on activities that produce negative externalities. For example, this strategy is employed with taxes on tobacco-containing products. Although it would be difficult and potentially illegal to tax a product into nonexistence, there is no doubt that taxes influence behavior. The laws of supply and demand dictate that as prices go up, consumption goes down, even if this is a simplification. In fact, revenues from cigarette taxes in California have fallen in recent years and public health researchers attribute at least some of this decline to the high excise taxes imposed on each pack of cigarettes, as well as users switching to other forms of tobacco and nicotine products such as vaping subject to comparatively lower taxes.

In modern times, excise taxes have also been employed as user fees. This is best understood with the example of the motor fuel tax, where gasoline purchases serve as a proxy for a driver's contributions to traffic congestion, road wear-and-tear, and emissions, in effect

setting a price on the use of public roads. Today, there are federal excise taxes on motor fuel, tobacco, and alcohol, among other goods, services, and activities, in addition to state excise taxes on electronic cigarettes, cannabis, firearms and ammunition sales, and more.

According to the Author

The author has provided the following statement in support of this bill:

Private corporations such as GEO Group and CoreCivic continue to profit from operating immigration detention facilities in California, despite longstanding concerns about unsafe conditions, inadequate medical care, and lack of accountability in civil detention settings. In 2026 alone, at least six individuals have died in ICE custody nationwide, underscoring the serious risks associated with this system. While California cannot dictate federal immigration policy, the state has a responsibility to ensure that corporations profiting from detention are held accountable. AB 1633 seeks to do so by imposing a gross receipts tax on private detention operators and directing the revenue toward immigrant legal services and due process protections.

Arguments in Support

This bill is co-sponsored by the California Immigrant Policy Center, which notes, in part:

Private detention facilities in California have a horrific track record of dangerous conditions, including inadequate access to medical care, physical and sexual abuse, unsafe food and water, and unsanitary conditions, threatening the health, safety and constitutional rights of individuals in California. The California Department of Justice conducted an inspection of a new private detention facility in Kern County and in December 2025, the Attorney General reported concerns of "dangerous living conditions" and "lack of adequate medical care." Additionally, the California Department of Justice conducted inspection of the private detention facility, the Adelanto Detention Facility, and in March 2026, the Attorney General reported "shockingly inadequate medical care, a failure to accommodate people with disabilities, disturbingly unsafe and unsanitary conditions, and a lack of basic necessities." The California Attorney General also stated, "Despite multiple complaints from Congress, detainees, community members, and my office, the federal government continues to allow this abuse, oppressive conditions, and clear violations of human rights to go unchecked."

Arguments in Opposition

This bill is opposed by the SFV Alliance, which notes, in part:

If this legislation passes, is signed in to tax code and withstands court challenges, it may result in these facilities leaving California. While I don't think the majority of the legislature will care about the increased tax revenue and local economic activity that will be lost from the closures, it might want to think about family members, loved ones, and legal representatives of those being detained and going through their due process hearings. Forcing detention centers out of state will make the detention center farther from loved ones to either visit and or check in on the person being detained. It will also make it harder and more expensive for California lawyers representatives to do in person representation, possibly forcing those lawyers to do remote representation.

FISCAL COMMENTS

According to the Senate Committee on Appropriations:

- 1) The CDTFA estimates that this bill would result in a revenue gain of \$177 million in 2027-28 (Due Process for All Fund). Annual revenue gains thereafter would likely be similar, to the extent such contracts continue in the State.
- 2) The CDTFA indicates that it would incur administrative costs of \$257,000 in 2026-27, \$1.5 million in 2027-28, \$131,000 in 2028-29, \$115,000 in 2029-30, and \$126,000 annually thereafter, to implement the provisions of the bill. Cost drivers would include identifying and notifying taxpayers, creating a new tax return, programming computer systems, revising publications, developing special notices and tax guides, developing regulations, preparing guidelines for staff, and answering numerous from operators and the public (Due Process for All Fund).

VOTES:

SENATE FLOOR: 37-0-3

YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNERney, Menjivar, Niello, Padilla, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Weber Pierson, Wiener
ABS, ABST OR NV: Ochoa Bogh, Reyes, Wahab

ASM EMERGENCY MANAGEMENT: 4-2-1

YES: Ransom, Arambula, Bennett, Calderon
NO: Hadwick, DeMaio
ABS, ABST OR NV: Bains

ASM ENVIRONMENTAL SAFETY AND TOXIC MATERIALS: 5-2-0

YES: Connolly, Bauer-Kahan, Lee, McKinnor, Papan
NO: Ellis, Castillo

ASM APPROPRIATIONS: 13-2-0

YES: Wicks, Arambula, Calderon, Caloza, Dixon, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache, Ta
NO: Hoover, Tangipa

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CONSULTANT: Wesley Whitaker / REV. & TAX. / (916) 319-2098

FN: 0004306