

[Senate Constitutional Amendment 19](#) (Gaines)

Date: March 7, 2018 (Introduced)

Program: Property Taxes

Sponsor: Author

California Constitution Article XIII A, Section 2

Effective: Upon Voter Approval

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**Summary:** Authorizes the Legislature to provide for a transfer of base year value to a replacement dwelling for homeowners who are honorably discharged veterans.

**Fiscal Impact Summary:** Property tax revenue loss of at least \$190 million annually.

**Existing Law:** For property tax purposes, the law requires assessors to reassess real property from its Proposition 13 protected value (called the "base year value") to its current market value whenever a change in ownership occurs.<sup>1</sup> However, subject to many conditions, current law<sup>2</sup> allows homeowners at least age 55 years or qualified disabled persons to sell their existing home (called the "original property"), buy or build a new one, and transfer their base year value to the new home (called the "replacement property"). This benefit gives homeowners property tax relief by allowing property taxes to remain essentially the same<sup>3</sup> after the move, provided they purchase a home of equal or lesser value. The replacement home must be purchased within two years, before or after, the original property's sale.

**Principal Place of Residence.** To qualify for this benefit, both the original property and the replacement property must be eligible for either the homeowners' exemption or the disabled veterans' exemption, based on the property owner's ownership and usage of the home as a principal place of residence.<sup>4</sup>

**Location Limitation.** The replacement property must be located either (1) in the same county as the original property, or (2) in a county that accepts "intercounty" transfers. Currently the 11 counties that have enabling ordinances are Alameda, El Dorado (until November 7, 2018), Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Tuolumne, and Ventura.

**Value Limit.** To qualify for this benefit, the replacement property's market value as of the date of purchase must be equal to or less than the original property's market value on the date of its sale. If the replacement home does not satisfy the "equal or lesser value" test, then no benefit is available. The meaning of "equal or lesser value" depends on when the replacement property is purchased. In general, equal or lesser value means:<sup>5</sup>

- 100 percent or less of the market value of the original property if a replacement property was purchased or newly constructed *before* the sale of the original property, or
- 105 percent or less of the market value of the original property if a replacement property was purchased or newly constructed *within the first year* after the sale of the original property, or

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<sup>1</sup> California Constitution article XIII A, [section 2](#).

<sup>2</sup> California Constitution article XIII A, section 2 (a), Revenue and Taxation Code (RTC) section [69.5](#).

<sup>3</sup> The property tax bill is not identical because the precise tax rate and direct levies (special assessments, parcel taxes, etc.) differ for each home's location.

<sup>4</sup> RTC sections 69.5(b)(2), 69.5(b)(4), and 69.5(g)(10).

<sup>5</sup> RTC Section 69.5(g)(5).

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- 110 percent or less of the market value of the original property if a replacement property was purchased or newly constructed *within the second year* after the sale of the original property.

**One-Time Benefit.** Eligibility for this benefit consists of many requirements. Currently, the "claimant" cannot have previously used the base year value transfer under section 69.5.<sup>6</sup> The law defines a claimant as any person claiming this property tax relief.<sup>7</sup> The law also considers a spouse who shares title of the newly purchased home with the claimant to be a "claimant" for purposes of future transfers. The law<sup>8</sup> allows a second base year value transfer if the person who was previously granted a base year value transfer for age subsequently becomes physically and permanently disabled and must move because of the disability.

**Proposed Law:** If voter-approved, this constitutional amendment authorizes the Legislature to provide for a transfer of base year value to a replacement dwelling for homeowners who are honorably discharged veterans. To date, implementing language has not been introduced.

**In General: Property Tax System.** In 1978, voters approved [Proposition 13](#). Under this system, property is reassessed to its current market value only after a change in ownership or new construction. Generally, the property's sales price sets the property's assessed value, and annual increases thereafter are limited to the rate of inflation up to two percent.

**Base Year Values.** At the time of the ownership change, the value for property tax purposes is redetermined based on current market value. This established value is described as the "base year value." Thereafter, the base year value is subject to annual increases for inflation limited to two percent per year. This value is described as the "factored base year value." The Proposition 13 system can result in substantial property tax savings for long-term property owners.

**Base Year Value Transfers.** Voters have approved three constitutional amendments permitting persons to transfer their Proposition 13 base year value from one home to another that is of equal or lesser value. The base year value transfer avoids reassessment of the newly purchased home to its fair market value.

- **Intracounty.** In 1986, [Proposition 60](#)<sup>9</sup> amended the constitution to allow persons over the age of 55 to sell a principal residence and transfer its base year value to a replacement principal residence within the same county.
- **Intercounty.** In 1988, [Proposition 90](#)<sup>10</sup> amended the constitution to extend these provisions to a replacement residence located in another county on a county-optional basis. Currently, eleven counties accept transfers from homes located in another county.
- **Disabled Persons.** In 1990, [Proposition 110](#)<sup>11</sup> amended the constitution to extend these provisions to any severely and permanently disabled person, regardless of age.

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<sup>6</sup> RTC section 69.5(b)(7). The law allows a second base year value transfer if the person previously granted a base year value transfer subsequently becomes disabled and files a disability-based claim.

<sup>7</sup> RTC section 69.5(g)(9).

<sup>8</sup> RTC section 69.5(b)(7).

<sup>9</sup> [Proposition 60](#), approved November 4, 1986.

<sup>10</sup> [Proposition 90](#), approved November 8, 1988.

<sup>11</sup> [Proposition 110](#), approved June 5, 1990.

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Article XIII A, section 2 of the California Constitution provides, in pertinent part:

[T]he Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. [¶...¶]

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners.

RTC section 69.5 implements all three propositions.

The BOE's Assessors' Handbook [Section 401](#), *Change in Ownership*, chapter 14 at page 106, provides more details, and the BOE's website includes FAQ's for [Propositions 60/90](#) and [Proposition 110](#).

**Service Discharge.** Under federal law, [USDVA benefits and services](#) provided to a veteran depend on the veteran's character of discharge from military service. There are five different types of discharges from active duty: Honorable, General (under honorable conditions), Other Than Honorable conditions (OTH), Bad Conduct, or Dishonorable. Generally, to receive [disability compensation](#) benefits from the USDVA requires an Honorable or a General (under honorable conditions) discharge. But, it is possible for a person with an OTH and Bad Conduct discharge to receive disability compensation if, after an investigation by the USDVA, which administers veteran benefits, the USDVA finds that the OTH or Bad Conduct discharge was not "under conditions other than dishonorable" and authorizes disability compensation benefits.

The Senate Committee on Veterans Affairs [legislative analysis for SB 1458](#) explains these issues in detail, a portion of which is excerpted below:

**Types of Military Discharges.** The military separates its personnel from active service by formally discharging them. Discharges may be either administrative or punitive. Each of the five different discharge statuses is determined by the characterization of an individual's service. The character of service slides along a scale with "honorable" at the high end and "dishonorable" at the low end.

The types of discharges fall under one of two categories: "administrative" or "punitive." Punitive discharges are reserved for the most negative cases and imposed only by special and general courts martial. Administrative separations cannot be awarded by a court-martial and are not punitive in nature. Enlisted personnel may be administratively separated with a characterization of service or a description of separation. Administrative discharges include:

- 1) *Honorable*. This is the most common discharge status. It presumes creditable service and good behavior. All service members will earn an Honorable Discharge unless they experience significant problems and receive a lower type of discharge.
- 2) *General (under honorable conditions)*. Sometimes referred to as a "General Discharge," it is granted if an individual's commander determines that the service has been generally honest and faithful, even if the person ran into some trouble. General Discharges are given for a variety of reasons, including failure to progress in training; failure to maintain military

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standards in appearance, weight, or fitness; or for disciplinary infractions, including drug or alcohol abuse.

- 3) *Other than Honorable*. An "OTH" discharge usually is given when an individual's service represents a broader pattern of departure from the conduct and performance expected of all military members. It can result from notable drug or alcohol problems, but also can be based on other misconduct, such as abuse of authority, fraternization, or a pattern of continued misconduct. OTH discharges bar the individual from reenlisting into any component of the armed forces, including the military reserves and National Guard.

Punitive discharges are authorized punishments of courts-martial and can only be imposed as an approved court-martial sentence following an individual's conviction for violating the Uniform Code of Military Justice. There are two types of punitive discharges:

- 1) *Bad Conduct Discharge*. This can be imposed by both special and general courts-martial. This discharge is usually given for convictions of crimes such as absent without leave, drunk on duty, driving while under the influence, adultery, writing bad checks, and disorderly conduct.
- 2) *Dishonorable Discharge*. This is the worst type of military discharge a service member can receive, and can be imposed only by a general court-martial. In most cases, a Dishonorable Discharge also involves being sentenced to serve time in a military prison.

## Commentary:

1. **Base Year Value Transfer.** This constitutional amendment, if approved by the voters, authorizes the Legislature to provide for a transfer of base year value to a replacement dwelling for homeowners who are honorably discharged veterans. To date, amendments to RTC section 69.5 to implement these provisions have not been introduced.
2. **Military Discharges.** The Senate Veterans Affairs Committee explains that OTH and Bad Conduct discharges lack the broad presumptive eligibility for most of the benefits enjoyed by the Honorable and General (Under Honorable Conditions) discharges. When recipients of OTH and Bad Conduct discharges claim federal benefits, the USDVA formally investigates and adjudicates the claims. Thus, a person that has an OTH or Bad Conduct discharge is initially barred from basic eligibility for federal benefits. But the circumstances surrounding those discharges may leave the door open for the USDVA, as administering agency of benefits, to make its own character of discharge determination in order to assess eligibility. The USDVA reviews facts and circumstances surrounding the incident(s) that led to the discharge, as reported by the military, as well as any supporting evidence furnished by the claimant or obtained from third parties. On a case-by-case basis, USDVA determines whether the incidents that led to the discharge may be found to have been "under conditions other than dishonorable," and thus whether basic eligibility for USDVA benefits can be established.
3. **Disabled Veterans' Exemption – Service Discharge Change.** California's law for disabled veterans' exemption eligibility formerly required the person's character of discharge to be under "honorable" conditions. The statute implementing the California Constitution's disabled veterans' exemption as provided in section 4 of article XIII of the Constitution (section 4) defines "veteran"<sup>12</sup> by cross reference to the veterans' exemption found in section 3 of article XIII of the

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<sup>12</sup> RTC Section [205.5\(b\)](#)

Constitution (section 3).<sup>13</sup> The veterans' exemption in section 3 requires a person to be serving in or to have served in and have been discharged under *honorable* conditions from service.<sup>14</sup> But, the disabled veterans' exemption in section 4 does not impose an eligibility requirement related to the person's character of discharge. It only requires that a person be "totally disabled" as a result of military related service.<sup>15</sup> Beginning with the 2017-18 fiscal year, [Senate Bill 1458](#) (Stats. 2016, ch. 871) amended RTC section 205.5 to expand the disabled veterans' exemption eligibility by changing the requirement that a veteran's character of discharge from military service be under "honorable" conditions to a lower threshold of under "other than dishonorable" conditions.

4. **Age.** In 1986, Proposition 60 amended section 2 of article XIII A of the California Constitution to allow persons over the age of 55 to sell a principal residence and transfer its base year value to a replacement principal residence within the same county. In 1988, Proposition 90 extended these provisions to a replacement residence located in another county on a county-optional basis. In 1990, Proposition 110 extended these provisions to severely disabled homeowners. RTC section 69.5, the statutory implementation for Propositions 60, 90, and 110, interprets Proposition 110 to apply to severely disabled homeowners of any age. As written, SCA 19 could be read to limit the base year value transfer to honorably discharged veterans who are at least age 55.
5. **One-Time-Only Limitation.** This constitutional amendment proposes a change to section 2 of article XIII A which was added by Proposition 60 and further amended by Propositions 90 and 110. RTC 69.5 limits usage of this base year value transfer to generally once in a lifetime. RTC section 69.5(b)(7) allows a second base year value transfer if the person who was previously granted a base year value transfer for age subsequently becomes disabled and has to move because of the disability. If SCA 19 is approved by voters and section 69.5 is amended to implement the base year value transfer for veterans, a veteran who uses this relief may be using their one-time-only base year value transfer.
6. **Related Legislation.** ACA 12 and AB 1596 (Gloria) propose to allow base year value transfers from one home to another when a person buys or builds a new home to accommodate a disabled child's needs. ACA 20 and AB 1748 (Steinorth) propose to allow a base year value transfer for homeowners, regardless of age, disability, or value.

**Costs:** If approved, the BOE would have absorbable costs to update its publications and website.

**Revenue Impact: Background, Methodology, and Assumptions.** SCA 19 provides honorably discharged veterans a base year value transfer of their primary residence to a replacement dwelling on or after January 1, 2019.

According to the most recent U.S. Census data, there are 1.7 million veterans in California. The National Association of Realtors reports homeownership rates among veterans is consistently around 80 percent. Department of Defense statistics indicate over 60 percent of veterans separated from service within the last decade received an honorable discharge. Staff then estimates the number of honorably discharged veteran homeowners in California at 800,000 (1.7 million x 80 percent x 60 percent).

<sup>13</sup> [Section 3\(o\)](#) of Article XIII of the California Constitution.

<sup>14</sup> Section 3(o) of Article XIII of the California Constitution.

<sup>15</sup> [Section 4\(a\)](#) of Article XIII of the California Constitution.

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Board of Equalization data shows an average of 740,000 annual single family home transfers across the state. There are 5.3 million claims for the homeowners' exemption. Therefore, the average annual rate of transfer for primary residences is estimated at 14 percent (740,000/5.3 million). Applied to homes owned by honorably discharged veterans, the estimated number of annual transfers is 112,000 (800,000 x 14 percent).

According to the California Association of Realtors, the median California home price in March 2018 was \$564,000. The 2017-18 average assessed value of a property receiving the homeowners' exemption was \$394,000. Therefore, for each transfer, the estimated assessed value difference is about \$170,000 (\$564,000 - \$394,000), or \$1,700 per transfer at the basic 1 percent property tax rate.

Under this proposal, revenue loss can be computed as follows:

$$112,000 \text{ annual transfers} \times \$1,700 \text{ per transfer} = \$190 \text{ million}$$

**Revenue Summary.** If approved, this constitutional amendment would initially reduce property tax revenues at the basic 1 percent tax rate by at least \$190 million annually.

**Qualifying remarks.** Generally, eligibility for the described property tax relief requires a sale of the original property, i.e., a change in ownership subjecting the original property to reappraisal at its current fair market value. This revenue estimate does not account for the change in the assessed value to the original property.

The historical average number of transfers is a baseline. This proposal may encourage more qualified homeowners to sell sooner than otherwise planned, thereby increasing the average number of annual transfers. Conversely, this proposal could limit qualified homeowners to a one-time-only transfer, unless subsequently becoming physically and permanently disabled.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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