California State
Board of Equalization

Legislative Bill Analysis

County-Assessed Properties Division

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Assembly Constitutional Amendment 24 (Waldron)
Date: February 14, 2018 (Introduced)
Program: Property Taxes
Sponsor: Author
California Constitution Article XIII A, Section 2
Effective: Upon voter approval

Summary: Authorizes the Legislature to allow, for property that is substantially damaged or destroyed in a Governor-declared disaster between January 1, 2017 and July 1, 2018, a base year value transfer anywhere in California.

Fiscal Impact Summary: Annual property tax revenue loss by $134,000 for every 100 qualifying transfers.

Existing Law: Under existing law, real property is generally reassessed to its current fair market value whenever there is a "change in ownership." The value initially established or reassessed upon a change in ownership is referred to as the "base year value."[1] However, under certain circumstances, property owners may avoid reassessment when acquiring or purchasing a particular property by way of a base year value transfer. Persons who own property substantially damaged or destroyed in a Governor-declared disaster may transfer the base year value of the damaged property to a comparable property within the same county that is purchased or newly constructed within 5 years of the date the disaster occurred.[2] Alternatively, if the property substantially damaged or destroyed in a Governor-declared disaster was the principal residence of the property owner at the time of the disaster, the property owner may purchase or newly construct a replacement property in a different county if the replacement property is:

- Located in a county that has enacted an ordinance,[3]
- Purchased or newly constructed within 3 years of the date of the disaster, and
- Of equal or lesser value.[4]

Proposed Law:

Base Year Value Transfer – Disaster Relief. This bill proposes to amend section 2(e) of article XIII A of the California Constitution to allow a property owner whose property was substantially damaged or destroyed in a Governor-declared disaster that occurred between January 1, 2017 and July 1, 2018, to acquire replacement property anywhere in California.

Base Year Value Transfer – Over 55/Disabled. This bill proposes to amend section 2(a) of article XIII A to add clarifying numbering.

Operative Date. This constitutional amendment is operative upon voter approval.

[1] Revenue and Taxation Code (RTC) section 110.1.
[2] RTC section 69.
[3] Contra Costa, Los Angeles, Modoc, Orange, San Francisco, Santa Clara, Solano, Sonoma, Sutter, and Ventura Counties.
[4] RTC section 69.3.

In General: **Disaster Relief.** There are a variety of provisions in property tax law to provide property tax relief for disaster victims. These provisions address both the short term and the long term consequences of the disaster as it relates to current and future property tax liabilities. In the short term, property tax liability is redetermined to reflect the damage to the property. Additionally, some taxpayers may defer the next property tax installment payment. Over the long term, property owners may rebuild or repair damaged properties without incurring any increase in property tax liability. Alternatively, property owners may relocate rather than rebuild without being adversely impacted by the property tax consequences.

The various provisions that provide property tax relief for disaster victims in the Revenue and Taxation Code (RTC) are as follows:

Revenue and Taxation Code	Property Type	Type of Relief Available	Type of Disaster
Section 70	All property types	New construction exclusion	Any disaster or calamity
Section 170	All property types	Removal of value; New construction exclusion	Governor-proclaimed; Any disaster or calamity
Section 69	All property types	Base year transfer within same county	Governor-proclaimed
Section 69.3	Principal place of residence	Base year transfer to another county	Governor-proclaimed
Sections 172 & 172.1	Manufactured home (license fee or property tax)	Base year transfer	Governor-proclaimed
Section 5825	Manufactured home (property tax only)	New construction exclusion; Base year transfer	Any disaster or calamity
Section 194	Real property and manufactured homes	Property tax deferral	Governor-proclaimed

Property Tax System. California's system of property taxation under article XIII A of the California Constitution (Proposition 13) values property at its 1975 fair market value, with annual increases thereafter limited to the amount of inflation or 2 percent, whichever is less, until the property changes ownership or new construction occurs. Once a reassessable event occurs (i.e., a change in ownership or new construction), the value of the property for tax purposes is redetermined based on its current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value." Because real estate values generally appreciate at a rate greater than 2 percent per year, when an event occurs triggering a reassessment of property to its current market value, the reassessed value (i.e., its new base year value) will likely be substantially higher.

California property tax law provides for various situations where the base year value of a property is either: (1) retained, notwithstanding that new construction has taken place or that the property has changed ownership, or (2) transferred to another property, notwithstanding that the property has changed ownership. These special situations are provided pursuant to various constitutional amendments modifying the original Proposition 13 framework and serve to avoid the otherwise required reassessment of a property to its current market value.

New Construction Exclusion. Related to the subject matter of this bill, RTC section 70(c) provides that "where real property has been damaged or destroyed by misfortune or calamity, 'newly constructed' and 'new construction' does not mean any timely reconstruction of the real property, or portion thereof, where the property after reconstruction is substantially equivalent to the property prior to damage or destruction." Any reconstruction of real property, or portion thereof, that is not substantially equivalent to the damaged or destroyed property, is treated as new construction. If this occurs, only that portion that exceeds what is deemed to be substantially equivalent reconstruction would be assessed at current market value. RTC section 70(c) does not provide any time limitation as to what is considered "timely" new construction for purposes of the exclusion.

Under this provision, however, reconstruction that does qualify means that the property will retain its previous assessed value after its reconstruction. Consequently, a property that is rebuilt after a fire will continue to be assessed at the same amount even though the property has been entirely newly constructed. (This new construction exclusion was provided by Proposition 8 in 1978).

Base Year Value Transfers. Voters have approved two constitutional amendments permitting persons to transfer their Proposition 13 base year value from one home to another in disaster situations. The base year value transfer avoids reassessment of the newly purchased home to its fair market value.

- **Intracounty.** In 1986, Proposition 50 amended the Constitution to allow property owners whose property was damaged or destroyed in a Governor-declared disaster to transfer its base year value to comparable property within the same county (implemented by RTC section 69).
- **Intercounty.** In 1993, Proposition 171 amended the Constitution to allow homeowners whose principal residence was damaged or destroyed in a Governor-declared disaster to be transferred to a replacement residence of equal or lesser value and located in another county if that county has enacted an ordinance approving such transfers (implemented by RTC section 69.3).

Specifically related to this bill, RTC section 69 provides that persons who own property substantially damaged or destroyed in a Governor-declared disaster may transfer the base year value of that property to a property acquired or constructed as a replacement if it is acquired within 5 years after the disaster. "Substantially damaged" means physical damage amounting to more than 50 percent of its current market value immediately prior to the damage. Base year value transfers are available for all property types, with the limitation that the original property and the replacement property must be of the same property *type*: residential, commercial, agricultural, or industrial. The replacement property is "comparable" if it is similar in size, utility, and function to the destroyed property, and if the market value of the acquired property does not exceed 120 percent of the fair market value of the replaced property in its pre-damaged condition. If the value of the replacement property exceeds the 120 percent limitation, the amount over this threshold is assessed at full market value and added to the transferred base year value.

RTC section 69.3 provides similar disaster base year value transfer provisions but, unlike RTC section 69, which applies to all property types, it is limited to principal places of residence purchased in another county and only applies to homes purchased in counties where the board of supervisors has adopted an ordinance making this benefit available. Additionally, replacement homes must be purchased within 3 years rather than 5 years. As of June 7, 2018, there will be 11 counties that have such an ordinance: Contra Costa, Los Angeles, Modoc, Orange, San Diego,[5] San Francisco, Santa Clara, Solano, Sonoma, Sutter, and Ventura.

Governor's Proclamation of State of Emergency. Government Code (GC) section 8625 authorizes the Governor to proclaim a state of emergency under specified circumstances. GC section 8558 establishes three conditions under which the Governor may proclaim a state of emergency:

1. "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the Governor, whenever this state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent.

2. "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state.

3. "Local emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city.

Generally, major disasters such as earthquakes, fires, storm damage, or flooding satisfy the second condition described as a "state of emergency."

Related to this bill, below is a chronological list of disasters from July 1, 2017 to present for which the Governor proclaimed a state of emergency.[6]

DATE OF DISASTER	TYPE OF DISASTER	COUNTIES INVOLVED
March 2018	Winter Storms	Amador, Fresno, Kern, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne
December 2017	Wildfires	Los Angeles, San Diego, Santa Barbara, and Ventura
October 2017	Flooding	Inyo and Mono
October 2017	Wildfires	Butte, Lake, Mendocino, Napa, Nevada, Orange, Solano, Sonoma, and Yuba
September 2017	Wildfires	Butte, Los Angeles, Madera, Mariposa, and Tulare
August 2017	Wildfire	Trinity
July 2017	Wildfires	Butte, Mariposa, Modoc, and Santa Barbara

Background: In 2006, Assembly Bill 1890 (Stats. 2006, ch. 317) extended the timeframe for RTC section 69 base year value transfers from 3 years to 5 years for all disasters occurring on or after July 1, 2003. In 1997, Senate Bill 594 (Stats. 1997, ch. 353) provided a special 5 year timeframe for any victim of the 1994 Northridge earthquake. Prior to that, in 1993, Assembly Bill 1824 (Stats. 1993, ch. 1053) extended the timeframe from 2 years to 3 years for all disasters occurring on or after October 20, 1991, the date of the Oakland Hill's fire.

[5] On May 8, 2018, the San Diego County Board of Supervisors adopted an ordinance implementing the intercounty disaster relief base year value transfer under RTC section 69.3. The ordinance goes into effect on June 7, 2018 and applies to replacement property purchased in San Diego County on or after October 9, 2017 (date of the Tubbs Fire in Napa and Sonoma Counties).

[6] See Board of Equalization's List of Governor-Proclaimed Disasters.

Commentary:

1. **Base year value transfers provide tax relief to disaster victims.** Permitting persons to "transfer" their base year value from one property to another provides tax relief by allowing property owners to continue paying taxes on the replacement property equivalent to that paid on the property from which they were displaced. Without a base year value transfer, the taxes on the new property would likely be significantly more because, under the general change in ownership laws, the taxes would be based on the property's current fair market value. The rationale for providing a base year value transfer is that the tax laws should not further afflict disaster victims by imposing upon them higher property taxes. If the disaster had not occurred, those individuals would not have been compelled to relocate and thereby forfeit their Proposition 13 protected base year values.

2. **Implementing Legislation.** A companion measure implementing the provisions of this bill has not yet been introduced or amended into an existing Assembly bill.

3. **Intracounty Base Year Value Transfers.** This bill proposes to amend the Constitution to allow either an intracounty or intercounty base year value transfer for any type of property. The California Constitution[7] already allows an intracounty base year value transfer for any type of property. Thus, this provision is duplicative of existing law.

4. **Intercounty Base Year Value Transfers.** This bill allows an intercounty base year value transfer for any type of property, including principal residences. Thus, this bill may conflict with the existing provisions[8] that allow a base year value transfer for principal residences that are substantially damaged or destroyed by a Governor-declared disaster.

5. **Date of acquisition or new construction of replacement property.** Existing Constitutional provisions that allow an *intracounty* base year value transfer do not specify a time period in which the replacement property must be acquired or newly constructed; however, its implementing statute provides that replacement property must be acquired or newly constructed within 5 years of the date of the disaster. On the other hand, the existing Constitutional provisions that allow an *intercounty* base year value transfer specify that the replacement property must be acquired or newly constructed within 3 years of the date the original property was damaged. Should these provisions be changed for consistency?

6. **Date of Disaster.** As drafted, these provisions apply only to Governor-declared disasters that occur between January 1, 2017 and July 1, 2018. These provisions would not apply to disasters that occurred on or before December 31, 2016 or on or after July 2, 2018. Additionally, these provisions would not apply to events of misfortune or calamity that were not the result of a Governor-declared disaster.

7. **Governor-Declared Disaster.** Section 2 of article XIII A of the California Constitution allows a property owner whose property was damaged or destroyed in a Governor-declared disaster to transfer its base year value to comparable property. We note that under GC section 8625, the Governor does not "declare" a disaster; rather, under GC 5885, the Governor may proclaim a state of emergency where conditions of disaster or of extreme peril to the safety of persons and

[7] Section 2(e)(1) of article XIII A of the California Constitution and RTC section 69.
[8] Section 2(e)(3) of article XIII A of the California Constitution and RTC section 69.3.

property exist within the state or a county, city and county, or city. To be consistent with the Governor's authority, the author may want to consider changing "declare" to "proclaim."

> (e) Notwithstanding any other provision of this section, the Legislature shall provide both of the following*:*
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> (1) (A) (i) That the base year value of property that is substantially damaged or destroyed by a disaster, as ~~declared~~ *proclaimed* by the Governor, may be transferred to comparable property located within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.
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> (B) In addition to the transfer of base year value of property within the same county that is permitted by subparagraph (A), the Legislature may authorize each county board of supervisors to adopt, after consultation with affected local agencies within the county, an ordinance allowing the transfer of the base year value of property that is located within another county in the State and is substantially damaged or destroyed by a disaster, as ~~declared~~ *proclaimed* by the Governor, to comparable replacement property of equal or lesser value that is located within the adopting county and is acquired or newly constructed within three years of the substantial damage or destruction of the original property as a replacement for that property. The scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to this subparagraph shall not exceed the scope and amount of the benefit provided to a property owner by the transfer of base year value of property pursuant to subdivision (a). For purposes of this subparagraph, "affected local agency" means any city, special district, school district, or community college district that receives an annual allocation of ad valorem property tax revenues. This subparagraph applies to any comparable replacement property that is acquired or newly constructed as a replacement for property substantially damaged or destroyed by a disaster, as ~~declared~~ *proclaimed* by the Governor, occurring on or after October 20, 1991, and to the determination of base year values for the 1991–92 fiscal year and fiscal years thereafter.
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> (2) That the base year value of property that is substantially damaged or destroyed by a disaster, as ~~declared~~ *proclaimed* by the Governor, occurring on or after January 1, 2017, to July 1, 2018, inclusive, may be transferred to comparable property located within the same or a different county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property. This paragraph shall apply only to intercounty transfers of base year value that occur on or after the effective date of this measure.

8. **Technical Suggestion.** This bill proposes to add paragraph numbering to section 2(a). As proposed, paragraphs (a)(3), (a)(4), and (a)(5) modify paragraph (a)(2). Since paragraphs (a)(2) through (a)(5) are implemented by RTC section 69.5, we suggest that paragraphs (a)(3) through (a)(5) are lettered instead as subparagraphs, as follows:

> *(2) For purposes of paragraph (1), the* 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. ~~For~~

~~(3)~~(A) For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling that was purchased or newly constructed on or after November 5, 1986.

~~In addition,~~

~~(4)~~(B) In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this State. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district that receives an annual property tax revenue allocation. This paragraph applies to any replacement dwelling that was purchased or newly constructed on or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but does not apply to any replacement dwelling that was purchased or newly constructed before November 9, 1988.

~~The Legislature~~

~~(5)~~(C) 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, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

9. **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. SB 1091 (Stone) proposes to amend RTC section 69, for property that was substantially damaged or destroyed in a Governor-declared disaster that occurred between January 1, 2017 and July 1, 2018, and this bill allows the property owner to acquire replacement property anywhere in California (we note that SB 1091 does not have a companion constitutional amendment).

10. **Related Initiative.** Initiative 1809 (17-0013A1), which changes requirements for certain property owners to transfer their property tax base to replacement property and includes changes to the disaster relief base year value transfer, was approved for the November 6, 2018 ballot.

Costs: The State Board of Equalization would incur absorbable costs in informing local county assessors, the public, and staff of the law changes.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

Revenue Impact: Assembly Constitutional Amendment 24 proposes to amend the California Constitution to expand disaster relief for property substantially damaged or destroyed by a Governor-declared disaster between January 1, 2017 and July 1, 2018. This measure allows a base year value to transfer to a replacement property anywhere in California. We need two factors to estimate revenue impact:

- The affected difference between market and assessed values; and,
- The number of additional transfers granted

Staff estimated the average value of each additional base year value transfer granted. According to the California Association of Realtors, the January 2018 median home price was $528,000. In Fiscal Year 2017-18, average assessed value of a property receiving the homeowners' exemption was about $394,000. Therefore, where the transfer is granted, the estimated amount of assessed value difference per home is about $134,000 ($528,000 – 394,000).

Next, staff estimated the number of additional transfers. In 2017, well over 10,000 homes were damaged or destroyed due to Governor-declared disasters. At the time of this estimate, several months remain in the period of time covered by this proposal. The revenue impact depends directly on the number of persons who will purchase a replacement property in a different county, and that number is difficult to predict. Rather, an order of magnitude may provide a better idea of the impact.

Assuming an assessed value difference of $134,000 per replacement home, for every 100 qualifying transfers under this proposal, revenue loss at the basic 1 percent property tax rate is computed as follows:

100 replacement homes x $134,000 x 1 percent, or $134,000.

Revenue Summary. This bill would reduce annual property tax revenues at the basic 1 percent tax rate by $134,000 for every 100 qualifying transfers.

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