Senate Bill 1091 (Stone)
Date: February 12, 2018 (Introduced)
Program: Property Taxes
Sponsor: Author
Revenue and Taxation Code Section 69
Effective: Upon enactment; operative upon voter approval of a constitutional amendment

David Yeung (Chief) 916.274.3334
Glenna Schultz (Analyst) 916.274.3362
Chris Butler (Revenue) 916.445.0840

Summary: For property that is substantially damaged or destroyed in Governor-declared disaster between January 1, 2017 and July 1, 2018, allows 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 five 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 three years of the date of the disaster, and
- Of equal or lesser value.[4]

Proposed Law: For property that was substantially damaged or destroyed in a governor-declared disaster that occurred between January 1, 2017 and July 1, 2018, this bill allows the property owner to acquire replacement property anywhere in California. This bill provides that provisions apply immediately. However, these provisions become operative only if the California Constitution is amended (a companion constitutional amendment has not yet been introduced).

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.

[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.

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 are as follows:

Revenue and Taxation Code	Property Type	Type of Relief Available	Type of Disaster
Section 170	All property types	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 State 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, Revenue and Taxation Code 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. 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, 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 five 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.

Section 69.3 provides similar disaster base year value transfer provisions but, unlike 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 three years rather than five years. As of 2017, there are ten counties that have such an ordinance: Contra Costa, Los Angeles, Modoc, Orange, San Francisco, Santa Clara, Solano, Sonoma, Sutter, and Ventura.

Governor's Proclamation of State of Emergency. Government Code section 8625 authorizes the Governor to proclaim a state of emergency under specified circumstances. Government Code 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."

In September, October, and December 2017, wildfires burned property resulting in the Governor proclaiming a state of emergency in Butte, Lake, Los Angeles, Madera, Mariposa, Mendocino, Napa, Nevada, Orange, San Diego, Santa Barbara, Solano, Sonoma, Tulare, Ventura, and Yuba Counties.[5]

Background: In 2006, Assembly Bill 1890 (Stats. 2006, ch. 317) extended the timeframe for 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.

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. **Operative Upon Voter Approval.** Currently, this bill does not have an operative date. A companion Senate constitutional amendment has not yet been introduced. Currently, the California Constitution provides that the Legislature may authorize base year value transfers in the manner and circumstances described in Propositions 50 and 171, as discussed above.

3. **Intercounty Base Year Value Transfers.** How will this bill affect the provisions that allow a base year value transfer for principal residences that are substantially damaged or destroyed by a disaster for which the Governor proclaimed a state of emergency (RTC section 69.3)?

4. **Operative Date and Effective Date.** Since these provisions become operative upon voter approval, should the effective date coincide with the operative date of the constitutional amendment?

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

5. **Date of Disaster.** As drafted, these provisions only apply to Governor-declared disasters that occurred 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 disaster for which the Governor proclaimed a state of emergency.

6. **Applies to Intercounty Transfers of Base Year Value that Occur on or after the Effective Date.** This is not clear. Does this apply to replacement property that is purchased or newly constructed on or after the effective or operative date? Alternatively, does this apply to claims filed on or after the effective or operative date?

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 Government Code section 8625, the Governor does not "declare" a disaster; rather the Governor may proclaim a state of emergency where conditions of disaster or of extreme peril to the safety of persons and property exist within the state or a county, city and county, or city. The author may want to consider adding a definition of "declare" that references the Governor's authority in Government Code section 8625.

8. **Related Legislation.** Assembly Constitutional Amendment 24 (Waldron) proposes to amend section 2 of article XIII A of the California Constitution to extend the intracounty disaster relief base year value transfer, for disasters that occur from January 1, 2071 to July 1, 2018, to replacement property located in anywhere in California.

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

Revenue Impact: Senate Bill 1091 expands 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.

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.

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.