California State
Board of Equalization

Legislative Bill Analysis

Senate Bill 1340 (Hertzberg)
Date: April 28, 2022 (Amended)
Program: Property Taxes
Revenue and Taxation Code sections 64 and 73
Effective: Immediately

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Summary: This bill would:

- Beginning with the lien date for the 2025-26 fiscal year, divides active solar energy systems into those with a rated nameplate capacity of 20 megawatts of alternating current or higher (called "nonqualified active solar energy systems" (NQASES), and those that do not have at least a capacity of 20 megawatts, which are referred to as "active solar energy systems" (ASES).
- Repeals the existing change in ownership exclusion for active solar energy systems financed by partnership flip transactions as of January 1, 2026, and adds a new change in ownership exclusion for ASES and NQASES financed by partnership flip transactions that begins with the 2025-26 fiscal year and has no sunset date. ASES and NAQSES that qualified for the change in ownership exclusion under section 64.1 as that section read on December 31, 2025, shall continue to be eligible for that exclusion.
- Indefinitely extends the new construction exclusion for ASESs and provides, effectively, 100 percent exclusion until the first lien date after one year after completion of new construction, followed by what is effectively a phase-in of the exclusion for NQASES for those systems not qualifying for the exclusion prior to December 31, 2025. The phase-in is based on a specified percentage of the full cash value of the system that varies depending upon the number of years following the date on which the new construction is completed. Those NQASESs qualifying for the exclusion prior to December 31, 2025, would continue to receive the full exclusion until a subsequent change in ownership.
- Sets the replacement cost new less depreciation (RCNLD) method of valuation as the preferred valuation method for County Assessors in determining the values of active solar energy systems for valuations commencing with the 2022-23 fiscal year through the 2024-25 fiscal year and for both ASES and NQASES beginning with the 2025-26 fiscal year. An assessment based on the preferred valuation method would be afforded the presumption of correctness.
- Reiterates the requirement that intangible assets and rights are not to enhance or be reflected in the value of taxable property. Specifically designates certain items as nontaxable intangible assets and rights. These provisions would apply to all active solar energy systems commencing with the 2022-23 fiscal year through the 2025-26 fiscal year and for both ASES and NQASES beginning with the 2025-26 fiscal year.

Summary of Amendments: The **April 28, 2022**, amendments delay several of the bill's provisions from the 2024-25 fiscal year to the 2025-26 fiscal year, specify certain systems that qualified for the change in ownership exclusion under section 64.1 as that section read on December 31, 2025, shall continue to be eligible for such protection, and additionally provide the phase-out exclusion timeframe and percentage of full cash value that would qualify for the exclusion.

Fiscal Impact Summary: Indeterminable.

Existing Law: Under the California Constitution, all property is taxable unless specifically exempted.[1] The Constitution limits the assessed value of property upon which the property tax is imposed. For property tax purposes, real property is reassessed to its current market value when real property undergoes a change in ownership or is newly constructed.[2] Generally, the law establishes a property's assessed value at its market value[3] on the date purchased (base year value) and requires additional assessments to reflect certain construction activities that qualify as "new construction."

Change in Ownership. Different change in ownership laws apply to a person or legal entity who purchases or leases California real property than to a person or legal entity who obtains ownership interests in a legal entity (e.g., voting stock in a corporation, capital and profits in a limited liability company or partnership) that holds an interest in California real property.[4] As a general rule, transfers of ownership interests in legal entities do *not* constitute a change in ownership (and, therefore, no reassessment) of the legal entity's real property.[5] However, there are two exceptions wherein the transfer of ownership interests in a legal entity would trigger a change in ownership of the real property owned by the legal entity.

- **Change in Legal Entity Control.** Revenue and Taxation Code (RTC)[6] section 64(c)(1) requires reassessment when any person or entity obtains control through direct or indirect ownership or control of more than 50 percent of corporation voting stock, or obtains a majority interest (more than a 50 percent ownership interest) in any other type of legal entity. The reassessment applies to all real property owned by the acquired legal entity (and any entity under its control).
- **Cumulative Transfers by "Original Co-owners**." Section 64(d) requires reassessment when voting stock or other ownership interests representing cumulatively more than 50 percent of the total interests in a legal entity are transferred by any of the "original co-owners" in one or more transactions.[7] The reassessment applies to only the real property previously excluded from change in ownership under section 62(a)(2).

New Construction. When substantial additions or alterations occur, the law requires the County Assessor to increase the assessment to reflect the value of "newly constructed" property.[8] The County Assessor

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[1] Article XIII, section 1 of the California Constitution.
[2] California Constitution, article XIII A, section 2; RTC section 110.1.
[3] The assessed value is based on 1975 market value for property that has not changed ownership since that date.
[4] California Constitution, article XIII A, section 2; RTC sections 60 – 69.5.
[5] RTC section 64(a).
[6] All section references will be under the Revenue and Taxation Code unless otherwise specified.
[7] **Proportional Ownership Interests Exclusion Creates "Original Co-owner" Designation.** Under section 62(a)(2), a transfer of real property to a legal entity does not result in a reassessment if the transfer is merely a change in the method of holding title and the proportional ownership interests of the transferors and transferees in the real property transferred are *exactly* the same before and after the transfer. However, after a transfer of real property qualifies for this exclusion from reassessment, the person(s) or entity(ies) holding ownership interests in the legal entity immediately after the transfer are considered "**original co-owners**" for purposes of tracking subsequent transfers by original co-owners of those interests. When such transfers cumulatively exceed 50 percent, the real property previously excluded from reassessment under RTC section 62(a)(2), is subject to reassessment under RTC section 64(d), absent an applicable exclusion.
[8] Article XIII A, section 2 of the California Constitution (Proposition 13) and RTC section 70. Additionally, "supplement assessment" laws make the new construction taxable as of the completion date.

assigns the assessable new construction with its own distinct base year value. The remainder of the property's assessment is unaffected and retains its base year value.[9] The Constitution allows the Legislature to provide that the term "newly constructed" does not include certain construction activities. These are commonly called "new construction exclusions." Any value added by these additions or alterations is not subject to be assessed, until the real property undergoes a change in ownership.

Active Solar Energy System New Construction Exclusion. The California Constitution[10] grants the Legislature the authority to exclude the construction or addition of any active solar energy system from the definition of assessable new construction. Section 73 implements the new construction exclusion, which is available through the 2023-24 fiscal year. Section 73 is scheduled to sunset on January 1, 2025. Any active solar energy system that was excluded prior to this date will continue to be excluded until a change in ownership occurs.

In 2011, the Legislature added findings and declarations,[11] which provide that in cases where a newly constructed active solar energy system is sold or transferred in sale-leaseback arrangements, partnership flip structures, or other transactions to take advantage of federal tax benefits, the active solar energy system new construction exclusion applies, as long as (1) the system is newly constructed or added, and (2) no other taxpayer has received the exclusion for that same system. The new construction exclusion remains in effect only until there is a subsequent change in ownership.

Proposed Law: **Indefinite Extension of Change in Ownership Exclusion.** This bill indefinitely extends the change in ownership exclusion for active solar energy systems, except for nonqualified active solar energy systems, financed by partnership flip transactions. Nonqualified active solar energy systems would receive an indefinite exclusion commencing with the property tax lien dates for the 2025-26 fiscal year.

Nonqualifed Active Solar Energy System. The bill defines a nonqualified active solar energy system "as an active solar energy system, as defined in subdivision (b) of section 73.1, with a rated nameplate capacity of 20 megawatts of alternating current or higher." Subdivision (b) of section 73.1 defines an active solar energy system, which does not include solar swimming pool heaters or hot tub heaters, and what such a system may be used for.

Phase-In of Exclusion for Nonqualified Active Solar Energy Systems with Nameplate Capacity of 20 Megawatts or Greater. The **April 28, 2022**, amendments would provide a 100 percent exclusion until the first lien date after one year after completion of new construction, then phase-in the solar exclusion for nonqualified active solar energy systems if that system has a rated nameplate capacity of 20 megawatts of alternating current or higher unless that system qualified for the 100% exclusion under section 73 as it read on December 31, 2025, in which case, the system shall receive the 100% exclusion until there is a subsequent change in ownership. For NQASESs to which the beforementioned exclusion does not apply, the exclusion would be phased in according to the following schedule:

- Date of completion of new construction until the first lien date that is at least 1 year after the date of completion of new construction, 100% exclusion pursuant to section 73.1.

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[9] Unless the new construction replaces certain types of existing improvements, in which case the value attributable to those preexisting improvements is deducted from the property's existing base year value.
[10] Article XIII A, section 2(c)(1).
[11] ABx1 15, Ch. 3, Stats. 2011.

- On the first lien date that is at least 1 year after the date on which the construction is completed on a NQASES, a 20% exclusion (i.e., 80 percent of the full cash value of that NQASES upon that first lien date is subject to tax);
- On the first lien date that is at least 4 years after the date on which the construction is completed on a NQASES, a 40% (i.e., 60% of the full cash value of that NQASES upon that first lien date is subject to tax);
- On the first lien date that is at least 7 years after the date on which the construction is completed on a NQASES, a 50% exclusion (i.e., 50% of the full cash value of that NQASES upon that first lien date is subject to tax).

Under the **April 28, 2022**, amendments, the NQASESs will then be subject to tax on only 50% of its full cash value in perpetuity.

Extends Partial Exclusion to Certain Parts. The bill proposes an exclusion up to 75% of the full cash value of parts that includes spare parts that are owned by the owner of, or the maintenance contractor, for an active solar energy system that uses solar energy in the production of electricity and which the parts were specifically purchased, designed, or fabricated by or for the owner or maintenance contractor for installation in an active solar energy system.

Extends Partial Exclusion to Certain Equipment. The bill proposes an exclusion up to 75% of the full cash value of equipment such as ducts and hot water tanks that is utilized by both auxiliary equipment and solar energy equipment.

Valuation Methods. The bill proposes the preferred method of valuation for any active solar energy system or portion thereof is the replacement cost new less depreciation (RCNLD) method. The value determined using the RCNLD method and section 73.3 or 73.4 shall be entitled to the presumption of correctness. For purposes of calculating the full cash value, fair market value, or taxable value, only the tangible property compromising the active solar energy system or portion thereof shall be included.

Defines Tangible Property for Valuation. The bill states tangible property shall not include intangible assets and rights relating to the going concern value of the business, as that phrase is used in section 110, of operating an active solar energy system or portion thereof. This valuation method shall apply to all property tax lien dates for the fiscal years 2022-23 to 2024-25 and is repealed on January 1, 2026, and does not include nonqualifed active solar energy systems.

Defines Intangible Assets for Valuation. The bill states intangible assets and rights relating to the going concern value of the business of operating an active solar energy system includes, but is not limited, to all the following:

- Federal and state tax credits, cash grants, direct payments, or similar federal subsidies received or to be received;
- Contracts for energy, resource adequacy, ancillary services, or related market products;
- Renewable energy credits as defined in paragraph (2) of subdivision (h) of section 399.12 of the Public Utilities Code;
- Environmental commodities, including, but not limited to, carbon credits and emission credits.

This valuation method shall apply to all property tax lien dates for the fiscal years 2022-23 to 2024-25 and is repealed on January 1, 2026, and does not include nonqualifed active solar energy systems.

Indefinite Extension of Valuation Methods Proposed by Bill. The valuation methods and definitions of tangible and intangible assets discussed in the previous two comments will also include nonqualifed active solar energy systems and apply to all property tax lien dates commencing with the 2025-26 fiscal year and continue in perpetuity.

Findings and Declarations. The Legislature finds and declares that section 73 was enacted to encourage and to provide incentives for the development of active solar energy systems by providing an exclusion from classifications as newly constructed the construction or addition of active solar energy systems.

No Reimbursement. Any local property tax dollars lost pursuant to the bill's provisions will not be reimbursed by the state.

Effective Date. If enacted, these provisions will become effective immediately.

In General: **Property Tax System.** Article XIII, section 1 of the California Constitution provides that all property is taxable at the same percentage of "fair market value," unless specifically exempted, or authorized for exemption. Article XIII A, section 2 defines "fair market value" as the County Assessor's opinion of value for the 1975-76 tax bill, or, thereafter, the appraised value of property when purchased, newly constructed, or a change in ownership has occurred. This value is generally referred to as the "base year value." Annual adjustments to the base year value are limited to 2 percent or the rate of inflation, whichever is less. Article XIII A, section 2 also provides for certain exclusions from consideration as a "change in ownership" and "newly constructed" as approved by voters via constitutional amendments.

New Construction. The California Constitution does not define the terms "new construction" or "newly constructed." Section 70 defines these terms, in part, to mean:

- Any addition to real property, whether land or improvements (including fixtures) since the last lien date.
- Any alteration of land or any improvements (including fixtures) since the last lien date that constitutes a "major rehabilitation" or that converts the property to a different use.

A major rehabilitation is any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture.

With respect to any new construction, the law requires the County Assessor to determine the added value upon completion. The value is established as the base year value for those specific improvements qualifying as "new construction" and is added to the property's existing base year value. When new construction replaces certain types of existing improvements, the value attributable to those pre-existing improvements is deducted from the property's existing base year value.[12]

New Construction Exclusions. Certain types of construction activity are excluded from assessment as "new construction" via constitutional amendment. Consequently, while these improvements may increase the value of the property, the additional value is not assessable. Relevant to this bill, Proposition 7, approved by California voters in November 1980, created an exclusion for active solar energy systems.

Overview of Solar Energy New Construction Exclusion. An "active solar energy system" is defined in section 73 as a system that uses solar devices, which are thermally isolated from living space or any other

[12] Section 71.

area where the energy is used, to provide for the collection, storage, or distribution of solar energy. An active solar energy system may be used for any of the following:

- Domestic, recreational, therapeutic, or service water heating
- Space conditioning
- Production of electricity
- Heat processing
- Solar mechanical energy

An active solar energy system includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. "Parts" includes spare parts that are owned by the owner of, or maintenance contractor for, an active solar energy system for which the parts were specifically purchased, designed, or fabricated for installation in that system. Such a system includes only equipment used up to, but not including, the stage of conveyance or use of the electricity.

An active solar energy system also includes pipes and ducts that are used exclusively to carry energy derived from solar energy. Pipes and ducts that are used to carry both energy derived from the sun and energy derived from other sources may be considered active solar energy system property only to the extent of 75 percent of their full cash value.

This exclusion is scheduled to sunset on January 1, 2025. Any active solar energy system that was completed and excluded from assessment prior to this date will continue to be excluded until a change in ownership occurs.

An active solar energy system does not include auxiliary equipment, such as furnaces and hot water heaters, that use a source of power other than solar energy to provide usable energy. Dual use equipment, such as ducts and hot water tanks, that is used by both auxiliary equipment and solar energy equipment is considered active solar energy system property only to the extent of 75 percent of its full cash value.

Section 73 explicitly provides that the exclusion does not apply to solar swimming pool heaters or hot tub heaters. By definition, the exclusion does not apply to "passive" solar systems. Lastly, the exclusion does not apply to wind energy systems.

Exclusion Extended to Initial Purchaser. Section 73 was amended in 2008[13] to extend the new construction exclusion after a change in ownership if a new building is initially constructed with an active solar energy system incorporated and subsequently sold by the developer through the 2015-16 fiscal year. Specifically, in the case where an active solar energy system is incorporated by an owner-builder in the initial construction of a new building that the owner-builder does not intend to occupy or use (i.e., a building offered for sale, such as a new home in a subdivision or a new warehouse), the exclusion for the system applies to the building's first buyer if (1) the owner-builder did not receive the exclusion for the same system, (2) if the initial buyer purchased the new building prior to that building becoming subject to reassessment to the owner builder,[14] and (3) a claim[15] is filed with the County Assessor.

Section 73 was amended in 2014 to extend the exclusion through the current 2023-24 fiscal year.[16]

[13] AB 1451, Ch. 538, Stats. 2008.
[14] Section 73(e)(1).
[15] Section 73(e)(1)(A); BOE-64-SES, *Initial Purchaser Claim for Solar Energy System New Construction Exclusion*.
[16] SB 871, Ch. 41, Stats. 2014.

If the exclusion is eligible to be extended to the initial purchaser, then in determining the base year value to be established as a result of the change in ownership, the base year value is reduced by the portion of the purchase price that is attributable to the active solar energy system. Thereafter, any subsequent change in ownership of the property ends the exclusion of the value of the active solar energy system from property tax.

Common Transactions that may be Eligible for Federal Tax Benefits. Under the 2011 legislative intent language, newly constructed active solar energy systems continue to receive the property tax exclusion if they are transferred using certain transactions that require the active solar energy system to be sold or transferred to a third party that may qualify for federal tax benefit. Transactions that may be eligible for federal tax benefits include, but are not limited to, the following:

- *Sale-leaseback transactions* involve the sale of a property in which the seller immediately begins to lease the property from the buyer. Thus, the seller no longer has ownership of the property, but operates it for the duration of the lease agreement.
- A *partnership flip transaction* is a financing arrangement between a renewable energy developer and a single or multiple tax investors whereby the parties form a partnership or limited liability company to develop and/or own an active solar energy system. This structure involves the tax investor making an investment in the partnership or limited liability company in exchange for the majority of the tax attributes (i.e., federal tax credits, depreciation, and net income) until the investor achieves its pre-established yield. The investor's share of these items is then reduced. The reduction is known as the "flip."

  In the case of a partnership flip transaction, if the investment made by the tax investor causes it to obtain more than 50 percent of the capital and profits interests of the partnership or limited liability company (either upon the making of the initial investment or pursuant to subsequent changes in the capital and profits percentages owned by the investor required by the partnership or operating agreement), the change in control is excluded by the new construction exclusion and no reassessment of the active solar energy system will occur. Once the investors achieve a pre-established yield or until after a pre-established period of time, at which time the tax attributes are reduced, and the developer obtains a majority of both the capital and profit interests of the partnership or limited liability company, no change in ownership or reassessment will occur. This type of transaction is limited to one with respect to any portion of an active solar energy system.[17]

Legal Entity Change in Control or Ownership. County Assessors discover most real property changes in ownership via grant deeds or other documents recorded with the County Recorder. However, real property owned by a legal entity may undergo a "change in control or ownership" with no grant deed or other document recorded that could alert the County Assessor to a reassessment. These types of changes in control or ownership are reported directly to the State Board of Equalization's (BOE) Legal Entity Ownership Program (LEOP) by the person or entity involved.

Existing law[18] requires legal entities to file a change in ownership statement (LEOP COS) with the BOE within 90 days of a change in control or ownership under RTC section 64(c) or (d). In the case of a change in control under section 64(c), the person or legal entity that *acquired* control of the legal entity is responsible for filing the LEOP COS.

[17] SB 267, Ch. 424, Stats. 2021.
[18] Sections 480.1 and 480.2.

In addition to the self-reporting requirement to file a LEOP COS, the BOE may send a LEOP COS to an entity to complete and file with the BOE. Annually, the BOE canvasses legal entities with a query on the California Franchise Tax Board income tax return. County Assessors and other interested parties may send referrals reporting possible changes.

Once the BOE determines that a legal entity has undergone a change in control or ownership, the BOE notifies County Assessors of those legal entities' changes in control or ownership.

Commentary:

1. **Section 73 is not a real property tax "exemption" for solar energy facilities, but a new construction "exclusion."** The new construction exclusion was created in 1980 via Proposition 7 to provide that the construction or addition of an active solar energy system to an existing property, by itself, would not lead to a revaluation of the property for property tax purposes. A new construction exclusion terminates if there is a transfer of the property resulting in a property's change in ownership (a reappraisal event). In the case of any locally assessed large scale solar project, only the active solar energy system improvements are eligible for the new construction exclusion, while the land remains subject to property tax.[19]

2. **Phase-In of Exclusion.** The **April 28, 2022**, amendments would provide a 100 percent exclusion until the first lien date after one year after completion of new construction, then phase-in the solar exclusion for nonqualified active solar energy systems if that system has a rated nameplate capacity of 20 megawatts of alternating current or higher unless that system qualified for the 100% exclusion under section 73 as it read on December 31, 2025, in which case, the system shall receive the 100% exclusion until there is a subsequent change in ownership. For NQASESs to which the beforementioned exclusion does not apply, the exclusion would be phased in according to the following schedule:

    - Date of completion of new construction until the first lien date that is at least 1 year after the date of completion of new construction, 100% exclusion pursuant to section 73.1.
    - On the first lien date that is at least 1 year after the date on which the construction is completed on a NQASES, a 20% exclusion (i.e., 80 percent of the full cash value of that NQASES upon that first lien date is subject to tax);
    - On the first lien date that is at least 4 years after the date on which the construction is completed on a NQASES, a 40% exclusion (i.e., 60% of the full cash value of that NQASES upon that first lien date is subject to tax);
    - On the first lien date that is at least 7 years after the date on which the construction is completed on a NQASES, a 50% exclusion (i.e., 50% of the full cash value of that NQASES upon that first lien date is subject to tax).

    After 7 years, the NQASES would remain taxable at 50% of its full cash value in perpetuity. It is unclear why the schedule set forth in section 73.2 first provides a 100 percent exclusion when construction is complete, then phases-in the exclusion by reducing it to a 20% exclusion, followed

[19] If the land is government owned, the land could become subject to a possessory interest. Generally, a taxable possessory interest exists when a taxpayer possesses an interest in government real property that is durable, independent, exclusive of the rights held by others in the real property and the interest provides a private benefit to the possessor.

by a 40% and 50% exclusion. Was the intent, rather, to provide a phase-*out* of the exclusion rather than a phase-*in* of the exclusion?

3. **County Assessors.** Under RTC 73, once an active solar energy system is completed, it is 100% excluded from the property's value so no valuation occurs. Once a change in ownership occurs, the property (including the active solar energy system) is reassessed to current market value. Under this bill, County Assessors will have to value nonqualifed active solar systems either upon completion of construction or when the first phase-out of the exclusion occurs and create a tracking system for the phase-out time system. County Assessors would need the tracking system to properly add value for the nonqualified active solar system at the appropriate phase-out time. This is likely to incur increased administrative and personnel costs on all County Assessors and burden offices in smaller counties and smaller staffs. Additionally, section 73.3(b) of the bill requires a determination of fair market value or full cash value pursuant to section 73. However, section 73 simply excludes a system upon completion of construction so there is no fair market value. Should this refer to section 73.1 or 73.2? The intent of section 73.3(b) is ambiguous. The author may wish to clarify its intent by making a technical amendment.

   (b) For purposes of applying Sections 110 and 212 to determine the "full cash value," "fair market value," or "taxable value" of any active solar energy system or portion thereof ~~under~~ <u>as defined by</u> Section 73, both of the following shall apply"

4. **Assessors' Appraisal Judgment**. This bill would limit or impact an assessor's appraisal judgment regarding the method of valuation, specific intangible assets, and the determination of the appraisal unit. The effect of these statutorily prescribed or favored appraisal judgments is unknown or unclear and the rationale is not plainly evident. For example, the operation of RTC 73.3 and 73.4 as relates to specifically identified intangible assets and rights, such as federal and state tax credits is unclear. Do those statutes require the removal of such credits from the cost of the equipment or that an assessor not separately include them as part of the assessment? How should credits based on production rather than cost be treated? How are such items treated if an appraiser determines that the RCNLD method is not the best valuation method notwithstanding that it is the preferred method?

5. **Preferred Method of Valuation**. Typically, property is valued for the income it will produce. What is the rationale for preferring RCNLD over the income or the comparable sales methods of valuation? Does RCNLD preference apply to residential systems sold as part of a home?

6. **Separate Appraisal Units.** Does the requirement that a solar energy system be a separate appraisal unit also apply to residential systems? If so, is the system a separate appraisal unit for change in ownership and temporary declines in value purposes?

7. **Separate Appraisal Unit and Taxability Schedule Allow "Double-Dip" Decrease in Taxability?** The requirement that an NQASES be considered a separate appraisal unit will likely result in an annual decline in the full cash value (and thus tax) of the NQASES even absent the section 73.2 taxability schedule. When combined with the section 73.2 taxability schedule, a smaller percentage of an annually decreasing full cash value will likely be subject to tax. Was the author's intent to allow what could be deemed a "double-dip" in decreasing the amount of new construction subject to tax?

8. **Presumption of Correctness**. The presumption of correctness automatically attaches to an assessor's valuation (except in limited circumstances). Thus, the provision that the presumption applies if the preferred method is used is superfluous. If the intent of this bill is to grant the

presumption only if the preferred method is used, that should be made clear by stating that the presumption does not apply unless the preferred method is used rather than stating the presumption applies if the preferred method is used.

9. **Intangible Assets and Rights**. This bill appears to redefine "full cash value" for solar energy systems by removing the requirement that taxable property be valued assuming the presence of intangible assets or rights necessary to put the taxable property to beneficial or productive use as set forth in RTC 110(e) and 212(c).
10. **Phase-Out and Subsequent Changes in Ownership**. Proposed RTC 73.2 sets out a schedule by which the exclusion is phased out. It is unclear what happens to an ASES or NQASES that is transferred while in the phase-out period. It should be clearly stated whether such transferred property is subject to immediate loss of the entire exclusion or if it is still subject to the phase-out. Also, is property that qualified for the RTC 73 exclusion prior to the effective date of this bill and changes ownership after the effective date of this bill subject to the phase-out or to 100 percent loss of the exclusion?
11. **Potential Constitutional Issue?** Article XIII, section 1 requires that all property be assessed at the same percentage of market value. Does this bill, by requiring NQASES's to be taxed at different percentages violate this provision?
12. **Exclusion In Perpetuity.** The bill proposes to indefinitely extend the solar exclusion for certain active solar energy systems. While such an extension would provide long term certainty for tax planning and investment purposes by companies operating in the solar industry in California and promote solar energy production, such an extension may be inconsistent with policies for other tax expenditures. Many tax expenditures passed by the Legislature require sunset dates so the Legislature may analyze the efficacy of such expenditures to ensure those expenditures are meeting their intended targets, goals, and public policy outcomes.[20] Given these other expenditures require sunset dates, is it appropriate to indefinitely extend a tax expenditure for active solar energy systems while other tax expenditures require a sunset?
13. **Solar Energy Systems Owned by Legal Entities.** The BOE notifies County Assessors of legal entities that have undergone a change in control or ownership. It is up to the County Assessor to verify whether the use of that property has met the statutory requirements of the exclusion.
14. **State assessed properties are not eligible for the new construction exclusion because it is only applicable to locally assessed property.** In *ITT World Communications, Inc. v. City and County of San Francisco* (1985) 37 Cal.3d 859, the California Supreme Court ruled that Proposition 13's (article XIII A) assessment rollback, its 2 percent limit on annual assessment growth, and its limit on current market value assessment only upon a change in ownership or new construction did not apply to state-assessed property, only to locally assessed property. As a result, taxable property in California is now generally split into two major categories: locally assessed property subject to article XIII A assessment limitations and state-assessed property not subject to those assessment limitations. Thus, active solar energy systems owned by public utilities and subject to BOE assessment do not benefit from the section 73 new construction exclusion; value of these properties would continue to be captured under the unitary approach to value.

Costs: The BOE estimates an agency cost of $4,905 and 140 personnel hours to issue two Letters to Assessors: one to inform County Assessors of the change in law and one to advise and provide guidance

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[20] Assembly Revenue and Taxation Committee, *Chair's Policy on Qualifying Tax Expenditure Measures*.

to County Assessors; update Assessors' Handbooks; and update active solar energy system guidelines. BOE staff also anticipates the likelihood to promulgate rules to address the separate appraisal unit, excluded intangible assets, and the RCNLD rebuttable presumption. The BOE is currently analyzing the cost estimate to promulgate these rules, but anticipate the costs to be potentially substantial.

Revenue Impact: This bill's revenue impact depends on how many active solar energy systems and nonqualified active solar energy systems would apply under the bill’s provisions. Additionally, the phase-in period for the solar tax exclusion is currently undefined in the bill’s language. The value of an active solar energy system is variable and depends on the features of each system on a case-by-case basis. The BOE does not have this data available; thus, the revenue impact is indeterminable.