



# California State Board of Equalization

## Legislative Bill Analysis

[Senate Bill 539](#) (Hertzberg)

**July 13, 2021 (Amended)**

Program: Property Taxes

Revenue and Taxation Code 63.2 and 69.6

Effective: Immediately

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*This analysis is limited to the property tax provisions.*

**Summary:** This bill proposes to add sections 63.2 and 69.6 to the Revenue and Taxation Code (RTC), clarifying portions of section 2.1 of article XIII A of the California Constitution regarding the intergenerational transfer exclusion and the base year value transfer for certain individuals.

**Summary of Amendments:** This amendment makes many technical revisions and provides additional clarity. More notable changes include:

- Clarified provisions relating to the intergenerational transfer exclusion for family farms.
- Provides an exception from the maximum of 3 base year value transfers for victims of wildfires or natural disasters.
- Specifies that victims of a wildfire or natural disaster who elect not to rebuild will be able to use the value of the property prior to it being in a damaged condition for the purposes of a base year value transfer.
- Technical changes to incorporate consistent terminology.

**Background:** Proposition 19, approved by the voters on November 3, 2020, as relevant here, added section 2.1 to article XIII A of the California Constitution to provide the following two types of property tax relief:

- Operative February 16, 2021, sections 2.1(c) and (d) replaced the former parent-child and grandparent-grandchild exclusions with a new intergenerational transfer exclusion, if the property continues as the family home or family farm of the transferee, and requires the family home or family farm to meet a specified value test.
- Operative April 1, 2021, section 2.1(b) allows a base year value transfer for homeowners who are over age 55, severely disabled, or victims of a wildfire or natural disaster to a replacement home in California, regardless of location or value.

### Fiscal Impact Summary:

- The fiscal impact of the intergenerational transfer exclusion is indeterminable.
- For the new base year value transfer for persons at least age 55 or severely disabled, the average revenue loss at the basic 1-percent property tax rate is estimated at \$2,340 per replacement home.

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**Intergenerational Transfer Exclusion, Revenue and Taxation Code Section 63.2**

**Existing Law:** Current 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 or new construction occurs.<sup>1</sup> Exceptions to this reassessment requirement have been enacted, including exclusions from reassessment for transfers between parents and children. Under certain circumstances, the parent-child exclusion is extended to transfers of real property from grandparents to grandchildren.

Operative February 16, 2021, Proposition 19 replaced the existing parent-child and grandparent-grandchild exclusion with a new intergenerational exclusion that applies only to a transfer of a family home or family farm, if the property continues as the family home or family farm of the transferee. *Section 2.1(c) and (d)*.

**Family Home.** Family home has the same meaning as "principal residence," as used in subdivision (k) of section 3 of article XIII. Proposition 19 provides that "family home" includes a "family farm," which means any real property that is under cultivation or being used for pasture or grazing or to produce any agricultural commodity, defined as any and all plant and animal products produced in California for commercial purposes.<sup>2</sup> *Section 2.1(c)(3)*.

**Principal Place of Residence.** To qualify for this benefit, Proposition 19 requires that (1) the home must be the principal residence of the transferor and continue as the principal residence of the transferee and (2) the transferee must file for the homeowners' or disabled veterans' exemption within one year of the date of purchase or transfer. *Section 2.1(c)(1) and (5)*.

**Principal Residence Value Test.** Proposition 19 provides that the existing adjusted base year value of the principal residence will remain if the reassessed value is less than the sum of the adjusted base year value of the principal residence of the transferor plus \$1 million. If the reassessed value exceeds the sum of the adjusted base year value of the principal residence of the transferor plus \$1 million, then the difference between (1) the sum of the adjusted base year value plus \$1 million, and (2) the reassessed value, is to be added to the property's existing adjusted base year value. *Section 2.1(c)(1)*.

**Adjustment of \$1 Million.** Beginning February 16, 2023, the \$1 million amount will be biennially adjusted by an inflation factor that is the percentage change in the House Price Index (HPI) for California for the prior calendar year, as determined by the Federal Housing Finance Agency. This bill requires the BOE to calculate and publish the adjustments required. *Section 2.1(c)(4)*.

**Grandparent-Grandchild Middle Generation Limitation.** Proposition 19 provides that the exclusion applies to a transfer between grandparents and grandchildren if all the parents of those grandchildren, who qualify as children of the grandparents, are deceased as of the date of the purchase or transfer. *Section 2.1(c)(2)*.

**Homeowners' and Disabled Veterans' Exemption.** The California Constitution<sup>3</sup> exempts from property tax the first \$7,000 of assessed value for owner-occupied principal places of residence. This exemption is

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

<sup>2</sup> Government Code section [51201](#) provides that "agricultural commodity" means any and all plant and animal products produced in California for commercial purposes, including, but not limited to, plant products used for producing biofuels, and industrial hemp cultivated in accordance with Food and Agricultural Code [division 24](#) (commencing with section 81000).

<sup>3</sup> Article XIII, section [3\(k\)](#).

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commonly known as the "homeowners' exemption." The California Constitution<sup>4</sup> also authorizes the Legislature to exempt partially or fully from property tax, the principal place of residence owned by a veteran or the veteran's spouse, including a veteran's unmarried surviving spouse, if the veteran has incurred certain injuries, including blindness in both eyes, lost use of 2 or more limbs, or is totally disabled. The exemption is also available to the veteran's unmarried surviving spouse if a veteran's death is from a service-connected injury or disease or occurs while on active duty in military service. This exemption is commonly referred to as the "disabled veterans' exemption."

### **Proposed Law:**

**Family Home – Principal Place of Residence.** This bill would require the family home to be the principal residence of the transferor and for the transferee to occupy the family home as a principal residence within one year of the transfer.

**Family Farm.** This bill allows the exclusion to apply to each legal parcel of a family farm and allows each parcel to be treated separately; except for the parcel including the family home which may be eligible for a base year value transfer under different provisions.

**Principal Place of Residence.** To qualify for this benefit, the home must be the principal residence of the transferee within one year and requires the transferee to file for the homeowners' or disabled veterans' exemption. This bill provides that if the transferee fails to file for either exemption at the time of transfer, the transferee is eligible for relief if the claim for the homeowners' or disabled veterans' exemption is filed within one year of the transfer. The bill also states that it can be occupied by an any eligible transferee and maintain the benefit of the exclusion, even if it is vacated by the original transferee.

**Grandparent-Grandchild Middle Generation Limitation.** This bill provides that the exclusion applies to a transfer between grandparents and grandchildren if all the parents (other than a stepparent) of those grandchildren, who qualify as children of the grandparents, are deceased as of the date of the purchase or transfer.

**Foster Children.** This bill would expand the benefit to apply to foster children who due to legal barriers have not been adopted by their state-licensed foster parent or parents prior to aging out of the foster system, in addition natural children, adopted children, stepchildren and in-law children.

**Filing Requirements.** In addition to filing for the homeowners' or disabled veterans' exemption, this bill will require the transferee to file a claim for the change in ownership exclusion, and provides that the exclusion be removed on the date an eligible transferee is no longer eligible for the homeowners' or disabled veterans' exemption. This form is not considered public information.

**Forms.** The State Board of Equalization (BOE) shall prescribe with consultation of the California Assessors' Association (CAA) a form to claim eligibility.

**BOE Responsibilities.** This bill authorizes the BOE to adopt emergency regulations and requires the BOE to produce claim forms and instructions necessary to implement section 2.1.

**Background: Prior parent-child and grandparent-grandchild exclusion.** In 1986, the voters approved Proposition 58, which, in part, added subdivision (h) to section 2 of article XIII A of the California

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<sup>4</sup> Article XIII [section 4\(a\)](#).

Constitution. Subdivision (h) provides that the terms *purchased* and *change in ownership* exclude the purchase or transfer of:

- A principal residence between parents and their children. There is no limit as to the value of the residence or how many principal residences may be transferred.
- The first \$1 million of the base year value<sup>5</sup> of all real property other than a principal residence between parents and children (called "other property"). Each person may transfer real property to any combination of parents and/or children up to \$1 million cumulatively over a lifetime.

Revenue and Taxation Code (RTC) section 63.1 implements the parent-child exclusion. The parent-child exclusion applies to changes in ownership that occur on or after November 5, 1986.

In 1996, the voters approved Proposition 193, which amended subdivision (h) to extend the parent-child exclusion to transfers from grandparents to grandchildren if certain members of the intervening parent generation are deceased. Section 63.1 was subsequently amended to reflect these new provisions. The grandparent-grandchild exclusion applies to changes in ownership that occur on or after March 27, 1996.

Section 2.1(d) (added by Proposition 19 on November 3, 2020) specifically provides that subdivision (h) of section 2 becomes inoperative on February 16, 2021.

### **Commentary:**

1. **Summary of Amendments.** The **July 13, 2021** amendment addresses several areas of the intergenerational transfer exclusion, including:
  - a. Clarifies the homeowners' or disabled veterans' exclusion must be claimed within one year by a transferee or a subsequent transferee.
  - b. Clarifies that the exclusion is to be removed on the lien date following the date that the transferee or subsequent transferee no longer qualifies for the exclusion.
  - c. Clarifies each legal parcel in a family farm is separately eligible for the exclusion, including a legal parcel that includes a family home.
2. **Summary of Amendments.** The **May 28, 2021** amendment addresses several areas of the intergenerational transfer, as follows.
  - a. Provides that each "legal parcel" making up a family farm may qualify for the exclusion if that legal parcel also meets the definition of a family farm.
  - b. Adds in a clause for foster children to be eligible for a transfer if certain conditions are met.
  - c. Requires the BOE in consultation with CAA to create emergency regulations and associated forms.
3. **Failure to File.** If the eligible transferee fails to file for the homeowners' or disabled veterans' exemption or files late, but files timely for the transfer exclusion, how will this be treated?

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<sup>5</sup> Article XIII, section 2(h) uses the term "full cash value." RTC section 63.1 provides that "full cash value" means full cash value as defined in section 110.1, which describes a property's base year value, not its current market value.

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4. **Family Farm - Legal Parcel (section 63.2(a)(2)).** (1) Applying a change in ownership exclusion by legal parcel is counter to well-settled appraisal practice and theory; and (2) how each legal parcel should be valued is unclear and likely to lead to a lack uniformity.
5. **Implementation.** This bill picks up many of the definitions and processes used for the former parent-child and grandparent-grandparent exclusion implemented under RTC section 63.1.
6. **Forms.** The BOE has already created new forms to implement the provisions of Proposition 19, which were transmitted to County Assessors via [Letter to Assessors No. 2021/007](#).
7. **Related Legislation.** [SB 668](#) proposes to delay the operative date of the changes to the existing parent-child and grandparent-grandchild exclusion from February 16, 2021 to February 16, 2023. [ACA 9](#) would repeal sections of Proposition 19 regarding the intergenerational transfer exclusion.

**Costs:** The BOE would incur absorbable costs to update forms, publications, website; and to address ongoing implementation issues.

### Revenue Impact:

Estimating the revenue impact of this section of SB 539 is difficult. While the BOE maintained somewhat useful information about claims granted under the previous \$1 million exclusions (Proposition 58/193 parent/child and grandparent/grandchild), that information did not include:

- the values of the properties transferred;
- how often a transferred home subsequently became the transferees' principal residence;
- consequences of the property no longer being used as the transferees' principal residence; and,
- how many principal residences transferred.

For these reasons, the revenue impact of this section of SB 539 is indeterminable.

### Over 55, Disabled Person Base Year Value Transfer and Victims of Wildfire or Natural Disaster, Revenue and Taxation Code Section 69.6

**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>6</sup> Exceptions to this reassessment requirement have been enacted, including base year value transfers for property owners whose property has been damaged or destroyed in a disaster for which the Governor proclaimed a state of emergency. In addition, subject to many conditions, the law<sup>7</sup> allows homeowners at least age 55 years, or who are severely and permanently disabled, or victims of a wildfire or natural disaster, 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 (replacement home).

**Over 55/Disabled/Victims of Wildfire or Natural Disaster Base Year Value Transfer.** Operative April 1, 2021, Proposition 19 allows homeowners at least age 55 years, qualified disabled persons, or victims of a wildfire or natural disaster to sell their existing home (called the "original property"), buy or build a new

<sup>6</sup> Article XIII A, section 2.

<sup>7</sup> Article XIII A, section 2(a), RTC section [69.5](#).

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one, and transfer their base year value to the new home (replacement home). This benefit gives homeowners property tax relief by allowing property taxes to remain essentially the same<sup>8</sup> after the move, provided they purchase or newly construct a home of equal or lesser value. The replacement home must be purchased or newly constructed within 2 years, before or after, the original property's date of sale.

- **Principal Place of Residence.** To qualify for this benefit, both the original property and the replacement home must be eligible for either the homeowners' or the disabled veterans' exemption, based on the claimant's ownership and occupation of the home as a principal place of residence.<sup>9</sup>

Proposition 19 added section 2.1(b) to article XIII A of the California Constitution to allow homeowners who are over age 55, severely disabled, or victims of wildfire or natural disasters to transfer a base year value to a replacement home anywhere in California, regardless of the location or value. Specifically:

- **Original Property.** The original property must be sold.
- **Replacement Property.** The replacement property must be purchased or newly constructed within two years of the sale of the original property.
- **Location.** The replacement property can be located anywhere in California.
- **Value.** The base year value may be transferred to a home of equal or lesser value. However, if the value of the replacement home is *greater* than the value of the original property, the difference in market values must be added to the transferred base year value.
- **Limitation on the Number of Base Year Value Transfers.** Homeowners over age 55 or severely disabled may use this base year value transfer up to three times.

## Proposed Law:

**Date clarifications.** Either the sale of the original property or the purchase or new construction of the replacement dwelling, but not both, may occur before April 1, 2021. This bill states that the base year value of the original property cannot be transferred until the original property is sold.

**Age 55/Disabled.** This bill provides that the claimant must be at least age 55 or severely and permanently disabled as of the date that the original property is sold.

**Limitation on Number of Base Year Value Transfers.** This bill allows persons using the relief under proposed section 69.6 for age or disability to transfer their base year value three times. There is no limit on transfers for those who are victims of wildfires or natural disasters.

**Property Value.** Allows a victim of a wildfire or natural disaster who chooses not to rebuild on their substantially damaged property to use the value of their property prior to it being in a damaged condition for a base year value transfer.

**Substantially Damaged.** Defines the term “substantially damaged” as damage to at least 50 percent of the property or improvements.

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<sup>8</sup> The property tax bill for the new home may not be identical to the property tax bill of the original home because the precise tax rate and direct levies (special assessments, parcel taxes, etc.) differ for each home's location.

<sup>9</sup> RTC sections 69.5(b)(2), 69.5(b)(4), and 69.5(g)(10).

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**Definitions.** Section 69.6 defines many terms allowing for clarity in the implementation of Proposition 19.

**Multiunit dwellings.** For the purposes of multiunit dwellings, each unit of a multiunit building is considered a separate replacement dwelling. A dwelling is not considered a multiunit dwelling for purposes of this section if it consists of a dwelling and an accessory dwelling unit (ADU) or junior ADU, and the claimant occupies one of the structures as a primary residence.

**In General: Property Tax System.** In 1978, voters approved [Proposition 13](#), which added article XIII A to the California Constitution. Under this system, property is valued at its 1975 fair market value, with annual increases thereafter limited to the amount of inflation or 2percent, 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.

**Over 55/Disabled Base Year Value Transfers. Prior to November 3, 2020,** voters approved three constitutional amendments permitting persons over age 55 or disabled to transfer their Proposition 13 base year value from one home to another that is of equal or lesser value<sup>10</sup>. The base year value transfer avoids reassessment of the newly purchased home to its fair market value.

- **Intracounty.** In 1986, [Proposition 60](#)<sup>11</sup> amended the constitution to allow persons who are 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>12</sup> amended the constitution to extend these provisions to a replacement residence located in another county on a county-optional basis. Relevant to this bill, the law gives each county board of supervisors the option to accept intercounty base year value transfers from homeowners moving from a different county. The boards of supervisors are required to consult with local affected agencies, cities, special districts, school districts, and community college districts, before making the decision to enact a necessary local ordinance.
- **Disabled Persons.** In 1990, [Proposition 110](#)<sup>13</sup> amended the constitution to extend these provisions to any severely disabled person regardless of age.

RTC section [69.5](#) implements these three propositions.

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<sup>10</sup> Article XIII A, section 2(a).

<sup>11</sup> [Proposition 60](#), approved November 4, 1986.

<sup>12</sup> [Proposition 90](#), approved November 8, 1988.

<sup>13</sup> [Proposition 110](#), approved June 5, 1990.

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The BOE's Assessors' Handbook [Section 401](#), *Change in Ownership*,<sup>14</sup> (September 2010) chapter 14, provides more details, and the BOE's website includes FAQ's for [Propositions 60/90](#) and [Proposition 110](#).

## Commentary:

1. **Summary of Amendments.** The **July 13, 2021** amendment addresses several areas of the base year value transfer including:
  - a. Excludes victims of wildfires and natural disasters from the limit of three base year value transfers in 69.6(b)(6).
  - b. Clarifies that victims of wildfires or natural disasters may use the value of their home prior to it being in a substantially damaged condition for purposes of a base year value transfer in 69.6(d)(8)(B).
  - c. Defines the term “substantially damaged.”
  - d. Technical changes to make terminology to be more consistent.
2. **Summary of Amendments.** The **May 28, 2021** amendment:
  - a. Includes victims of wildfires or natural disasters.
  - b. Requires the BOE in consultation with CAA to create emergency regulations and forms.
  - c. Provides additional definitions of terms.
  - d. Addresses replacement of multiunit dwellings.
  - e. Allows for an increase of the amount of the cash value of the replacement dwelling for comparison with the original property if purchased one or two years after the sale of the original property.
  - f. Creates requirements for text on property tax bill envelopes. This was deleted in the July 13, 2021 amendment.
3. **April 1, 2021 Operative Date.** This bill clarifies that either the sale of the original primary residence or the purchase or new construction of the replacement primary residence, but not both, may occur on or before April 1, 2021, in order for a homeowner to be eligible under Proposition 19.
4. **Existing Over 55/Disabled Base Year Value Transfer.** The current base year value transfer for persons who are over 55/disabled (Proposition 60/90/110) is implemented by RTC section 69.5. This bill does not add a sunset date to RTC section 69.5. However, legislative intent language makes clear that section 69.5 is superseded by 69.6. The disaster base year value transfer under RTC sections 69 and 69.3, however, remain in effect.
5. **Accessory Dwelling Units.** ADUs are treated differently than other multiunit dwellings under this bill. If the ADU and primary dwelling are both occupied by separate parties, only one party will be able to transfer their base year value.

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<sup>14</sup> This document is in the process of being converted to be ADA compliant and is available upon request.

6. **“Equal or lesser value”.** RTC section 69.6(d)(13) “imports” the definition of “equal or lesser value” from RTC section 69.5. Is this the author’s intent even though RTC 69.5 prohibited the base year value transfer in its entirety if the “equal or lesser value” test was not met while Proposition 19 disallows only that portion of the replacement home value that exceeds the value of the sold home.

**Costs:** Currently, the BOE maintains a database to track the one-time-only limitation. The BOE would incur costs up to \$53,000 to create a database program to track the three-time-only limitation. The BOE would also incur absorbable costs to update forms, publications, website, and to address ongoing implementation issues.

**Revenue Impact:** The revenue impact of this section of SB 539 is difficult to estimate. This bill clarifies Proposition 19, which allows three base year value transfers for homeowners over 55, or who are severely and permanently disabled. Under Proposition 19, a replacement home can be purchased or constructed anywhere in California and of any value. While these changes to existing law will likely result in significantly more base-year value transfers annually, it is difficult to estimate how many more. It is also difficult to attribute how many of these additional transfers are a result of Proposition 19 and unrelated to this bill. However, using statewide average values, staff can attempt to compute an average revenue impact for every additional transfer.

According to the California Association of Realtors, the January 2021 median home price in California was \$700,000. For roll year 2021-22, the estimated average assessed value of a property receiving the homeowners’ exemption is \$466,000. Therefore, where a claim for transfer is granted, the estimated amount of assessed value difference per home on average is \$234,000 (\$700,000 – \$466,000). Average revenue loss at the basic 1-percent property tax rate is estimated at \$2,340 per replacement home (\$234,000 x 1%), or roughly \$2.34 million for every one-thousand claims granted.

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