Senate Constitutional Amendment 4 (Galgiani)
Date: February 25, 2019 (Introduced)
Program: Property Taxes
Sponsor: Author
California Constitution Article XIII A, Section 2
Effective: Upon voter approval, operative January 1, 2021

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Summary: Subject to voter approval, this constitutional amendment proposes to make the following changes to section 2 of article XIII A of the California Constitution:

- For the parent-child and grandparent-grandchild exclusion: (1) limits the principal residence exclusion, and (2) eliminates the exclusion for real property other than a principal residence.
- For the age 55/disabled base year value transfer provisions: (1) eliminates the one-time-only limitation, (2) allows a replacement dwelling to be located anywhere in California, (3) removes the equal-or-lesser value standard.
- For the disaster relief base year value transfer provisions: (1) removes the comparability standard, (2) allows a replacement property to be located anywhere in California, and (3) removes the equal-or-lesser value standard for intercounty transfers.
- For the base year value transfer for qualified contaminated property: (1) allows a replacement dwelling to be located anywhere in California, and (2) removes the equal-or-lesser value standard.

Fiscal Impact Summary:

- The revenue impact of the change to the parent-child and grandparent-grandchild exclusion is indeterminable.
- The change to the base year value transfer for persons at least age 55 or disabled would result in an average revenue loss of $1,540 per additional claim granted.
- The change to the disaster relief base year value transfer would result in an average revenue loss of $1,540 per replacement home and $15,000 per commercial replacement property.
- The change to the contaminated property base year value transfer reduce annual property tax revenues by $1,540 per replacement home and by $15,000 per commercial replacement property.

Parent-Child and Grandparent-Grandchild Exclusion

Existing Law: 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.[1] 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.

[1] Article XIII A, section 2.

Existing law[2] provides that the terms "purchased" and "change in ownership" shall not include the purchase or transfer of a principal residence, or the first $1 million of all other real property, between parents and their children.

Proposed Law: This bill moves the parent-child and grandparent-grandchild exclusion from section 2(h) to section 2(a) and reletters the remainder of section 2. This bill provides that the principal residence exclusion applies as long as the residence continues as a principal residence of the transferee. This bill eliminates the $1 million exclusion for any other type of property (other than a principal residence).

Principal Residence Value Test. This bill 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 is equal to or 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.

Principal Place of Residence. To qualify for this benefit, the home must be the principal residence of the transferor and continue as the principal residence of the transferee.

Exclusion Amount Adjustment. This bill requires that the exclusion amount be annually adjusted by the percentage change in the California House Price Index (HPI), rounded to the nearest one-thousandth of 1 percent, for the first three quarters of the prior calendar year, as determined by the Federal Housing Finance Agency.

In General: In 1986, the voters approved Proposition 58, which, in part, added subdivision (h) to section 2 of article XIII A of the California 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[3] 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.

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.

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[2] Article XIII A, section 2(h) and Revenue and Taxation Code (RTC) section 63.1.

[3] 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.

To qualify for this exclusion, a claim form must be timely filed with the county assessor. If a claim is filed late, prospective relief is available if the transferee still owns the real property.

Principal Place of Residence. For a principal place of residence, there is no limit as to value or how many times a principal residence can be transferred to a qualifying parent, child, or grandchild. To qualify for the principal residence exclusion, the real property must be eligible for either the homeowners' exemption or the disabled veterans' exemption, based on the property owner's ownership and occupation of the home as a principal place of residence.[4] A "principal residence" includes only that portion of the land underlying the residence that consists of an area of reasonable size that is used as a site for the residence.

Statewide Tracking Database. To monitor and enforce the $1 million limit statewide, assessors report information from approved claims[5] to the Board of Equalization (BOE) to maintain a database to track the $1 million limit of transferors who transfer "other property" that receives the parent-child or grandparent-grandchild exclusion. The transferors' names and pertinent information are entered in the database. When a transferor cumulatively transfers more than $1 million of adjusted base year value, a report is sent to the county assessors to take action (i.e., verify information and, if necessary, reassess).

Commentary:

1. **No Companion Measure.** This constitutional amendment does not have a companion measure. If these changes are enacted, section 63.1 would have to be amended to conform.

2. **Movement from Subdivision (h) to Subdivision (a).** This bill proposes to move the parent-child and grandparent-grandchild exclusion from subdivision (h) to subdivision (a) and reletters subdivisions (a) through (g) as subdivisions (b) through (h). If these changes are enacted, multiple references to these subdivisions in the Revenue and Taxation Code would have to be amended to reflect the new subdivision lettering.

3. **Principal Residence Exclusion.** Currently, each transferor may transfer any number of principal residences to an eligible parent or child, or grandchild (under limited circumstances). There is no limit as to the value of a principal residence and no limit as to the number of principal residences a transferor can transfer to an eligible parent or child over a lifetime. A grandparent may transfer a principal residence to a grandchild as long as the deceased parent did not transfer a principal residence to their child (i.e., the grandchild); if the deceased parent transferred a principal residence to their child, then the grandparent's residence that transfers to the same child/grandchild is counted under the $1 million exclusion.

4. **Principal Residence Value Test.** Under this bill, if the reassessed value of the principal residence is *less than* the sum of the property's adjusted base year value and $1 million, then the property's adjusted base year value will remain the same. If the reassessed value of the principal residence is *equal to or greater than* the sum of the adjusted base year value and $1 million, then the difference between (1) the sum of the adjusted base year value and $1 million, and (2) the reassessed value, is to be added to the adjusted base year value. The term "reassessed value" is not defined. This bill appears to require that all principal residences that transfer between parent and child be reappraised to verify qualification. This additional workload on the

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[4] RTC sections 63.1(b)(1).
[5] RTC section 63.1(f).

county assessor's appraisal staff could delay the approval of claims for the parent-child or grandparent-grandchild exclusion.

5. **Exclusion Amount Adjustment.** This bill provides that the "exclusion amount" be annually adjusted by the percentage change in the California HPI, rounded to the nearest one-thousandth of 1 percent, for the first three quarters of the prior calendar year, as determined by the Federal Housing Finance Agency. Base year values are annually adjusted by the percentage change in the California Consumer Price Index from October to October, not to exceed two percent.[6] A definition of "exclusion amount" is not provided. The bill is unclear as to what the annual percentage change in the California HPI is to be applied.

6. **Exclusion Amount Adjustment: Negative housing price index changes**? On occasion, the change in the housing price index is negative. This bill provides that the assessor is to adjust the exclusion amount by the difference in the HPI. Thus, it appears that assessors would be required to reduce the "exclusion amount" when the HPI is negative. Other annual inflationary adjustments for base year values[7] and the disabled veterans' exemption limits are based on the California Consumer Price Index, which is generally considered a more stable index than the California HPI.

7. **Principal Residence of Transferee.** Under this proposal, the principal residence qualifies for the exclusion only if the property "continues" as the principal residence of the eligible transferee. Is there a time period within which a transferee must occupy the property as their principal residence? What happens if the transferee subsequently moves out? Presumably, the property will be reassessed to market value. If the assessor discovers the property has not been occupied by the transferee for a period of months or years, will the property be reassessed as of the date the property is no longer the transferee's primary residence, possibly resulting in escape assessments? A clarification of what "continues" means in the implementing legislation would be helpful.

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

Currently, the BOE maintains a database that tracks a transferor's $1 million lifetime limit for property other than principal residences. The BOE would incur costs to reprogram this database if a limitation is placed on a transferor's ability to use the principal residence exclusion.

Revenue Impact: Based on BOE Property Tax Department data, we know there are 64,000 Proposition 58/193 (parent/child and grandparent/grandchild) claims granted on average annually. However, we cannot determine (1) the values of the properties transferred, (2) which transferred homes subsequently became the transferees' primary residence, or (3) how many properties were considered "other real property" (SCA 4 eliminates that part of the exclusion).

In addition, SCA 4 is unclear (1) whether assessors will reappraise the market value of the principal residence on each lien date, (2) how the proposed annual exclusion amount relates to the HPI method versus the current CCPI method, and (3) when the transferee must establish the transferred home as

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[6] RTC sections 51(a)(1)(c).

[7] RTC sections 51(a)(1)(c) and 205.5(h).

their primary residence and for how long. For all of these reasons, the revenue impact of this section of SCA 4 is indeterminable.

Age 55/Disabled Base Year Value Transfer

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.[8] However, subject to many conditions, the law[9] allows homeowners at least age 55 years or qualified disabled persons to sell their existing home (called the "original property"), buy or build a new one, and transfer their base year value to the new home (replacement home). This benefit gives homeowners property tax relief by allowing property taxes to remain essentially the same[10] after the move, provided they purchase a home of equal or lesser value. The replacement home must be purchased within 2 years, before or after, the original property's sale.

Principal Place of Residence. To qualify for this benefit, both the original property and the replacement 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.[11]

Location Limitation. The replacement home must be located either (1) in the same county as the original property, or (2) in a county that has enacted an ordinance accepting "intercounty" transfers. Currently, the 10 counties that have enabling ordinances are Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Tuolumne, and Ventura.

One-Time Benefit. Current law[12] allows homeowners to use this base year value transfer only one time. The sole exception is that if a homeowner is granted the age 55 base year value transfer, the homeowner may transfer the base year value a second time if the homeowner subsequently becomes physically and permanently disabled and must move because of the disability.

Statewide Tracking Database. To monitor and enforce this one-time base year value transfer limit statewide, the law[13] requires the BOE to maintain a database to track persons granted a base year value transfer. When married persons file a claim to transfer the base year value of their current home to a newly purchased home to which they share title, their names and pertinent information are entered in the database. This ensures that neither person will be allowed a future transfer.

Value Limit. To qualify for this benefit, the replacement home's market value as of the date of purchase must be *equal to or less than* the original property's market value on the date of its sale. If the replacement home does not satisfy the "equal or lesser value" test, then the benefit is not available. The meaning of "equal or lesser value" depends on when the replacement home is purchased or newly constructed. In general, equal or lesser value means:[14]

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[8] Article XIII A, section 2.
[9] Article XIII A, section 2(a), RTC section 69.5.
[10] 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.
[11] RTC sections 69.5(b)(2), 69.5(b)(4), and 69.5(g)(10).
[12] RTC section 69.5(b)(7).
[13] RTC section 69.5(b)(7).
[14] RTC section 69.5(g)(5).

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

A claim for relief must be filed with the county assessor of the county in which the replacement home is located. The claim must be filed within three years after the replacement home is acquired or newly constructed. If the claim is filed after the three-year deadline, prospective relief is available.[15]

Proposed Law:

Location. This proposed amendment allows homeowners at least age 55 or severely disabled to transfer a base year value to a replacement home located anywhere in California.

Value. This proposal allows a base year value transfer to a home of any value. If the value of the replacement home is greater than the value of the original property at the time the values are compared, the difference in market values will be added to the transferred base year value of the original property. If the replacement home is of lesser value, there will be a proportional decrease in the transferred base year value of the original property.

One-Time-Only Limitation. This proposal removes the one-time-only limitation, thereby allowing persons over age 55 or severely disabled any number of base year value transfers.

In General:

Property Tax System. In 1978, voters approved Proposition 13. Under this system, property is reassessed to its current market value only after a change in ownership or new construction. Generally, the property's sales price sets the property's assessed value, and annual increases thereafter are limited to the rate of inflation up to 2 percent.

Base Year Values. At the time of the ownership change, the value for property tax purposes is redetermined based on current market value. This established value is described as the "base year value." Thereafter, the base year value is subject to annual increases for inflation limited to 2 percent per year. This value is described as the "factored base year value." The Proposition 13 system can result in substantial property tax savings for long-term property owners.

Base Year Value Transfers. Voters have approved three constitutional amendments permitting persons 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. The base year value transfer avoids reassessment of the newly purchased home to its fair market value.

- **Intracounty.** In 1986, Proposition 60[16] 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.

[15] RTC section 69.5(f).
[16] Proposition 60, approved November 4, 1986.

- **Intercounty.** In 1988, Proposition 90[17] 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[18] amended the constitution to extend these provisions to any severely and permanently disabled person regardless of age.

RTC section 69.5 implements all three propositions.

The BOE's Assessors' Handbook Section 401, *Change in Ownership*, chapter 14, provides more details, and the BOE's website includes FAQ's for Propositions 60/90 and Proposition 110.

Background: The following table lists previous legislative attempts to allow a partial benefit for replacement homes of greater value.

Bill Number	Session	Author	Disposition
SCA 24	2017-18	Galgiani	Not assigned to committee.
ACA 20/AB 1748	2017-18	Steinorth	ACA 20 was not heard. AB 1748 failed passage in the Assembly Revenue and Taxation Committee.
ACA 12/AB 2668	2015-16	Mullin	ACA 12 was not heard. AB 2668 was held in the Assembly Appropriations Committee.
SCA 9/SB 378	2015-16	Beall	SCA 9 did not pass out of the Senate Elections and Constitutional Amendments Committee. SB 378 was held in the Senate Appropriations Committee.
SCA 11/SB 274	2009-10	Dutton	Did not pass out of Senate Revenue and Taxation Committee. This bill also expanded the purchase window from within two years to three years of the original property's sale date.
SCA 24/SB 1610	2007-08	Dutton	Did not pass out of Senate Revenue and Taxation Committee. This bill also expanded the purchase window from within two years to three years of the original property's sale date.

The following table lists previous legislative attempts to require all counties to accept intercounty base year value transfers.

[17] Proposition 90, approved November 8, 1988.
[18] Proposition 110, approved June 5, 1990.

Bill Number	Session	Author	Disposition
ACA 7	2017-18	Bocanegra	Not assigned to committee.
AB 1172* as amended 3/21/13	2013-14	Bocanegra	Limited to persons 65+. Not heard with the intercounty provisions. Amended out 01/06/14.
SCA 31/SB 1415	2009-10	Walters	Not heard.
ACA 39/AB 1960	1997-98	Takasugi	Held in Assembly Appropriations Committee.
ACA 57/AB 3234	1987-88	Mojonnier	Not heard.

* Assembly Bill 1172 only applied to homeowners 65 years and older. Those between the ages of 55 and 64 remained limited to the county in which they currently reside or those counties with active ordinances.

Assembly Bill 1172, as amended January 6, 2014, would have required the California Research Bureau to evaluate the revenue impact if California enacted a statute similar to Florida's "Save Our Homes" portability statute. (Florida Stat., Sec. 193.155(8); we note that Florida's program is not age-restricted.) These provisions were amended out of that bill. However, a study was conducted under the Faculty Fellows Program. In 2016, The Center for California Studies published *Economic Impacts of a Property Assessment Portability Law*, by Dr. Adrian R. Flessig, California State University, Fullerton. The study concluded that Florida's portability law "will provide an additional incentive for residential property owners to sell their home and purchase another residence. This will increase turnover rates and homeowner mobility."

Proposition 5 on the November 6, 2018 ballot would have amended section 2 of article XIII A to allow a base year value transfer for homeowners age 55 or severely disabled anywhere in California and to property of any value. If the market value of the replacement property is greater than the market value of the original property, the increase in value would be added to the transferred base year value. If the market value of the replacement property is less than the market value of the original property, there would be a proportional decrease in the transferred base year value. Proposition 5 failed to pass, 58.7 percent no to 41.3 percent yes.

Commentary:

1. **No Companion Measure.** This constitutional amendment does not have a companion measure. If these changes are enacted, section 69.5 would have to be amended to conform.

2. **New Value Comparison Test.** Currently, the market value of the replacement home on its date of purchase or completion of new construction is compared to the market value of the original property on its date of sale. If the replacement home's market value is equal or less than 100, 105, or 110 percent of the original property's market value (depending on the replacement home's date of purchase or completion of new construction and the original property's date of sale), then the replacement home will qualify value-wise for the base year value transfer). If the replacement home's value exceeds the applicable value test, no partial relief is available.

   Under this proposal, the equal or lesser value test is replaced with a 100 percent test. If the replacement home is of greater value, the difference in values is added to the original property's base year value so that partial relief is available. If the replacement home is of lesser value, then the original property's base year value will be proportionally decreased.

For example, a couple sells their principal place of residence for $600,000. At the time of sale, this property had a factored base year value of $269,250.

- **Home of Greater Value.** If this couple purchases a replacement dwelling for $800,000, the new base year value is calculated as follows.
  - Difference between the full cash value of the original property and the full cash value of the replacement dwelling:

    $800,000 - $600,000 = $200,000
  - Add the difference to the base year value of the original property:

    $269,250 + $200,000 - $469,250

    Under this scenario, the replacement dwelling's new base year value is $469,250.
- **Home of Lesser Value.** If this couple purchases a replacement dwelling for $500,000, the new base year value is calculated as follows.
  - Divide the base year value of the original property by the full cash value of the original property:

    $269,250 ÷ $600,000 = .44875
  - Multiply the result by the full cash value of the replacement dwelling:

    $500,000 x .44875 = $224,375

    Under this scenario, the replacement dwelling's new base year value is $224,375.
- **Home of Equal Value.** If this couple purchases a replacement dwelling for $600,000, the replacement dwelling's new base year value will be the same as the factored base year value of the original property ($269,250). The calculations are demonstrated as follows:
  - Divide: $269,250 ÷ $600,000 = .44875
  - Multiply: $600,000 x .44875 - $269,250

3. **Tracking.** Currently, a base year value can be transferred to a single replacement home or a single unit of a multi-unit dwelling. Will there be a need to track sales of original properties to ensure the base year value from the original property is not transferred to more than one replacement home?

Costs: Currently, the BOE maintains a database that tracks the one-time-only limitation. The BOE would incur costs to reprogram this database if tracking will be required to ensure that the base year value from the original property is not transferred to more than one replacement home. The BOE would also incur absorbable costs to update forms, publications, and the website, and address ongoing implementation issues.

Revenue Impact: The revenue impact of this section of SCA 4 is difficult to estimate. Based on BOE Property Tax Department data, we know the historical average of Proposition 60/90/110 claims granted is between 5,000 and 6,000 annually. However, this proposal allows an unlimited number of base year value transfers for persons over 55 or disabled to anywhere in California and to a replacement home of any value. While these changes to existing law will likely result in significantly more claims granted annually, we do not know how many more. However, using statewide average values, we can attempt to compute an average revenue impact for every additional claim granted.

According to the California Association of Realtors, the March 2019 median home price was $566,000. In Fiscal Year 2018-19, average assessed value of a property receiving the homeowners' exemption was $412,000. Therefore, where the transfer is granted, the estimated amount of assessed value difference per home on average is $154,000 ($566,000 – $412,000).

Average revenue loss at the basic 1 percent property tax rate is estimated to be $154,000 x 1% = $1,540 per additional claim granted.

Disaster Relief Base Year Value Transfer

Existing Law: 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.[19] Exceptions to this reassessment requirement have been enacted, including two 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.

Intracounty Transfers. Existing law[20] allows a person who owns property substantially damaged or destroyed in a Governor-proclaimed disaster to transfer the base year value of the damaged property to a comparable replacement property, as long as the replacement property is:

- Located within the same county,
- Purchased or newly constructed within five years of the date the disaster occurred, and
- Similar in size, utility, and function.
    - Property is similar in *size and utility* if the market value of the acquired property does not exceed 120 percent of the fair market value of the damaged or destroyed property in its pre-damaged condition. If the market value of the replacement property exceeds 120 percent, partial relief is available. Specifically, the excess above 120 percent is subject to reassessment to current market value, and that value is added to the transferred base year value.
    - Property is similar in *function* if the replacement property is subject to similar governmental restrictions, such as zoning. The replacement property must be used in the same manner as the damaged or destroyed property.

Intercounty Transfers. Existing law[21] allows a homeowner whose principal residence was substantially damaged or destroyed in a Governor-proclaimed disaster to transfer the base year value to a replacement property that is purchased or newly constructed in a different county, as long as the replacement property is:

[19] Article XIII A, section 2(e) and (f).
[20] RTC section 69.
[21] RTC section 69.3.

- Located in a county that has enacted an ordinance,[22]
- Purchased or newly constructed within three years of the date of the disaster,
- The principal residence of the property owner, and
- Of equal or lesser value.

Equal or lesser value means the current market value of the replacement property must be *equal to or less than* the market value of the damaged property immediately prior to the damage. A replacement property is considered comparable if its full cash value does not exceed one of the following:

- **105 percent** if the replacement property is purchased or newly constructed *within the first year* following the date of the damage or destruction of the original property
- **110 percent** if the replacement property is purchased or newly constructed *within the second year* following the date of the damage or destruction of the original property.
- **115 percent** if the replacement property is purchased or newly constructed *within the third year* following the date of the damage or destruction of the original property.

A claim for relief must be filed with the county assessor of the county in which the replacement property is located. The claim must be filed within three years after the replacement property is acquired or newly constructed.

Proposed Law: This proposal removes the requirement that a replacement property be located in the same county as the damaged property or in a county that has enacted an ordinance allowing intercounty transfers. In addition, this proposal replaces the requirement that the replacement property be comparable to the damaged property with a market value comparison test. If the replacement property is of greater value than the original property, the difference in market values will be added to the transferred base year value of the original property. If the replacement home is of lesser value, there will be a proportional decrease in the transferred base year value of the original property.

For principal residence intracounty transfers, this proposal places a sunset date on its provisions and essentially merges this relief with the intercounty provisions as described above.

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 are as follows:

[22] Contra Costa, Los Angeles, Modoc, Orange, San Francisco, Santa Clara, Solano, Sonoma, Sutter, and Ventura Counties.

RTC	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)	Base year transfer; new construction exclusion	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 value even though the entire property has been 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 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.

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 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. Currently, there are 11 counties that have such an ordinance: Contra Costa, Los Angeles, Modoc, Orange, San Diego, San Francisco, Santa Clara, Solano, Sonoma, Sutter, and Ventura.

If a property owner transfers their base year value under either section 69 or 69.3, then the new construction exclusion under section 170 does not apply if the property owner subsequently rebuilds the damaged or destroyed structure.

Background: Initially, a replacement property located within the same county had to be purchased within two years of the date of the disaster. In 1993, AB 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 Hills fire. In 1997, SB 594 (Stats. 1997, ch. 353) created a special 5-year period for any victim of the 1994 Northridge earthquake. In 2006, AB 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 2018, two bills were introduced that would have allowed a base year value transfer to any county in California for property that was substantially damaged or destroyed by a Governor-proclaimed disaster that occurred between January 1, 2017 and July 1, 2018. ACA 20 (Steinorth) proposed changes to article XIII A, section 2, but was not assigned to committee. ACA 20 did not have a companion measure.

SB 1091 (Stone) proposed changes to section 69 that would have been operative upon voter approval of a constitutional amendment that was not introduced; SB 1091 was held in the Senate Appropriations Committee.

Proposition 5 on the November 6, 2018 ballot would have amended section 2 of article XIII A to allow a base year value transfer for property owners whose property has been substantially damaged or destroyed in a Governor-proclaimed disaster anywhere in California and to property of any value. If the market value of the replacement property is greater than the market value of the original property, the increase in value would be added to the transferred base year value. If the market value of the replacement property is less than the market value of the original property, there would be a proportional decrease in the transferred base year value. Proposition 5 failed to pass, 58.7 percent no to 41.3 percent yes.

Commentary:

1. **No Companion Measure.** This constitutional amendment does not have a companion measure. If these changes are enacted, sections 69 and 69.3 would have to be amended to conform.

2. **Combines the Base Year Value Transfers.** Essentially, this proposal combines the two disaster relief base year value transfers into one with the sole requirement based on a market value comparison.

3. **No Comparability Standard.** Currently, a replacement property must be comparable to the substantially damaged property that it replaces. "Comparable" is defined as similar in size, utility, and function. "Similar in function" means a replacement property must be used or intended to be used in the same manner as the damaged property.[23] As this proposal is written, the comparability standard is eliminated, including the similar use requirement. Consequently, if these provisions are enacted, a damaged property can be replaced with any type of property. For example, if a principal residence is destroyed in a Governor-proclaimed disaster, it can be replaced with a commercial property.

   However, we note that the provision that eliminates the comparability standard creates a conflict with section 2 of article XIII A, subdivision (f)(2), which defines comparability as similar in size, utility, and function.

4. **Reduced Value Standard for Intracounty Transfers.** Currently, a replacement property must be comparable to the substantially damaged property that it replaces. "Comparable" is defined as similar in size, utility, and function. "Similar in size and utility" means the market value of the acquired property does not exceed 120 percent of the fair market value of the damaged or destroyed property in its pre-damaged condition. Under current law, partial relief is available if the full cash value of a replacement property exceeds 120 percent of the damaged property's full cash value. Any portion of the replacement property's full cash value that exceeds 120 percent of the damaged property's full cash value is added to the damaged property's base year value.[24] This bill reduces the value threshold from 120 percent to 100 percent.

5. **Damaged Land Retains its Base Year Value.** Even though a property's base year value may be transferred to a replacement property under sections 69 or 69.3, the damaged land retains its

[23] RTC section 69(c)(2)(B).
[24] RTC section 69(b)(2).

base year value. A damaged property's base year value that is attributable to land cannot be reset as that property has neither undergone a change in ownership nor has the land been reconstructed.

6. **Choice of relief.** If a property owner chooses to transfer the base year value to another property under either sections 69 or 69.3, the new construction exclusion under section 70(c) or 170 is no longer available. If the substantially damaged or destroyed improvement is repaired or reconstructed, the new construction will be reassessed to current market value upon completion of construction.

7. **Technical Clean-Up.** Article XIII A, section 2(f) provides definitions for purposes of the disaster relief base year value transfer contained in existing subdivision (e). The author may want to consider moving these definitions from subdivision (f) to subdivision (e).

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

Revenue Impact: The revenue impact of this section of SCA 4 is difficult to estimate. First, we do not know the number of replacement properties resulting from future Governor-declared disasters. Second, we do not know how those replacement properties will compare in size or value to the original property, as provided. However, using statewide average values for residential and commercial property, we can attempt to compute an average revenue impact.

Residential Property. According to the California Association of Realtors, the March 2019 median home price was $566,000. In Fiscal Year 2018-19, average assessed value of a property receiving the homeowners' exemption was $412,000. Therefore, where the transfer is granted, the estimated amount of assessed value difference per home on average is $154,000 ($566,000 – $412,000).

Average revenue loss at the basic 1 percent property tax rate is: $154,000 x 1% = $1,540 per replacement home.

Commercial Property. Based on BOE Property Tax Department data, the average assessed value of a commercial property in California is about $2.0 million. Each year, BOE conducts a study of commercial property sales in California to determine the effective assessment level (i.e., the percentage difference between assessed value and market value). The latest study found assessed values were 57 percent of market values on average. Applying this ratio to the assessed value of commercial property, we estimate current average market value to be $3.5 million ($2.0 million / 57%). Therefore, where the transfer is granted, the estimated amount of assessed value difference is $1.5 million ($3.5 million – $2.0 million).

Average revenue loss at the basic 1 percent property tax rate is: $1.5 million x 1% = $15,000 per commercial replacement property.

Revenue Summary This bill would reduce annual property tax revenues at the basic 1% tax rate on average by $1,540 per replacement home and by $15,000 per commercial replacement property.

Qualifying Remarks. This revenue estimate assumes residential property is replaced with residential property, and commercial property is replaced with commercial property. 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.

Qualified Contaminated Property Base Year Value Transfer

Existing Law: 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.[25] Exceptions to this reassessment requirement have been enacted, including a base year value transfer for property owners of qualified contaminated property.

Existing law[26] allows two possible types of property tax relief to property owners who unknowingly purchase qualified contaminated property. Property owners may either transfer the base year value of the qualified contaminated property to a replacement property or rebuild their property after the land contamination is cleaned up and receive a new construction exclusion. Under either option, the property owner may retain their prior level of taxation under Proposition 13.

Qualified contaminated property. A qualified contaminated property is property that is uninhabitable, if residential, or unusable, if nonresidential, as a result of environmental problems. The property must be designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.[27]

Location. Both the qualified contaminated property and the replacement property must be located in the same county. If not, the county in which the replacement property is located must have a resolution authorizing intercounty transfers under section 69.4. To date, none of the 58 counties has passed such a resolution.

Replacement Property. A replacement property must be acquired or new construction completed within five years after the sale or transfer of a qualified contaminated property. The replacement property must be of equal or lesser value as compared to the original property. *Equal or lesser value* means the fair market value of the replacement property on the date of purchase or completion of new construction cannot exceed:[28]

- **105 percent** of the fair market value of the original property as if uncontaminated if a replacement property is purchased or newly constructed within the *first year* following the date of sale or transfer of the original property.
- **110 percent** of the fair market value of the original property as if uncontaminated if a replacement property is purchased or newly constructed within the *second year* following the date of sale or transfer of the original property.
- **115 percent** of the fair market value of the original property immediately as if uncontaminated if a replacement property is purchased or newly constructed within the *third year* following the date of sale or transfer of the original property.
- **120 percent** of the fair market value of the original property immediately as if uncontaminated if a replacement property is purchased or newly constructed within the *fourth year* following the date of sale or transfer of the original property.

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[25] Article XIII A, section 2.
[26] Article XIII A, section 2(i) and RTC sections 69.4 and 74.7.
[27] Article XIII A, section 2(i)(2)
[28] Section 69.4(e)(2.

- **125 percent** of the fair market value of the original property immediately as if uncontaminated if a replacement property is purchased or newly constructed within the *fifth year* following the date of sale or transfer of the original property.

If a lot is purchased and comparable structures constructed, the market value of the lot and improvements as of the date of completion is compared to the market value of the qualified contaminated property as if uncontaminated on the date of sale or transfer.

Proposed Law:

Location. This proposed amendment allows owners of qualified contaminated property to sell the contaminated property and transfer its base year value to a replacement property located anywhere in California.

Value. This proposal allows a base year value transfer to a property of any value. If the replacement property is of greater value than the original property, the difference in market values will be added to the transferred base year value of the original property. If the replacement property is of lesser value, there will be a proportional decrease in the transferred base year value of the original property.

In General: Proposition 1 (ACA 22, Stats. 1998, res. ch. 60), approved by the voters on November 3, 1998, added subdivision (i) to section 2 of article XIII A of the California Constitution. ACA 22 was introduced to prevent a substantial property tax increase that will be incurred by four Orange County homeowners and one other resident of the Orange County subdivision who used a building as a both a residence and as the location of a sawhorse-making business (July 7, 1997 conference with U.S. Environmental Protection Agency (U.S. EPA) Assistant Regional Counsel Vicky Lang). These property owners were informed in 1989 by the U.S. EPA that their property, a vintage housing development, had been built in 1958-59 on soil contaminated from the 1930's dumping of fuel into a trench. In 1992, the U.S. EPA designated this property as a Superfund site. In June 1995, these structures were destroyed at the direction of U.S. EPA in order to allow the hazardous materials to be removed.

Proposition 1 amended the Constitution to allow property tax relief in one of two forms for qualified contaminated property. Specifically, property owners who were not responsible for the contamination are able to either:

- Sell or otherwise transfer the qualified contaminated property and transfer its base year value to a replacement property of equal or lesser value; or
- Repair or replace without reassessment structures located on the qualified contaminated property that were substantially damaged or destroyed during the course of the remediation of the environmental problems.

This relief applies to replacement property that is acquired or newly constructed on or after January 1, 1995, and to property repairs performed on or after that date.

Relevant to this bill, the base year value transfer is implemented by section 69.4.

Background: Proposition 5 on the November 6, 2018 ballot would have amended section 2 of article XIII A to allow a base year value transfer for owners of contaminated property anywhere in California and to property of any value. If the market value of the replacement property is greater than the market value of the original property, the increase in value would be added to the transferred base year value.

If the market value of the replacement property is less than the market value of the original property, there would be a proportional decrease in the transferred base year value. Proposition 5 failed to pass, 58.7 percent no to 41.3 percent yes.

Commentary:

1. **No Companion Measure.** This constitutional amendment does not have a companion measure. If these changes are enacted, section 69.4 would have to be amended to conform.
2. **Qualified Contaminated Property.** The contaminated property must be designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government. A contaminated designation by a local agency does not qualify the property for property tax relief.
3. **New Value Comparison Test.** Currently, the market value of the replacement property on its date of purchase or completion of new construction is compared to the market value of the original property on its date of sale. If the replacement property's market value is equal or less than 105, 110, 115, 120, or 125 percent of the original property's market value (depending on the replacement property's date of purchase or completion of new construction and the original property's date of sale), then the replacement property will qualify value-wise for the base year value transfer). If the replacement property's value exceeds the applicable value test, no partial relief is available.

   Under this proposal, the equal or lesser value test is replaced with a 100 percent test. If the replacement property is of greater value, the difference in values is added to the original property's base year value so that partial relief is available. If the replacement home is of lesser value, then the original property's base year value will be proportionally decreased.

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

Revenue Impact: The revenue impact of this section of SCA 4 is difficult to estimate. First, we do not know the number of future qualified contaminated properties, as defined. Second, we do not know how each replacement property will compare in size or value to the original property, as provided. However, using statewide average values for residential and commercial property, we can attempt to compute an average revenue impact.

Residential Property. According to the California Association of Realtors, the March 2019 median home price was $566,000. In Fiscal Year 2018-19, average assessed value of a property receiving the homeowners' exemption was $412,000. Therefore, where the transfer is granted, the estimated amount of assessed value difference per home on average is $154,000 ($566,000 – $412,000).

Average revenue loss at the basic 1% property tax rate: $154,000 x 1% = $1,540 per replacement home.

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Average revenue loss at the basic 1 percent property tax rate: $1.5 million x 1% = $15,000 per commercial replacement property.

Revenue Summary. This bill would reduce annual property tax revenues at the basic 1% tax rate on average by $1,540 per replacement home and by $15,000 per commercial replacement property.

Qualifying Remarks. This revenue estimate assumes residential property is replaced with residential property, and commercial property is replaced with commercial property. 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.