



# CALIFORNIA ASSESSORS' ASSOCIATION EXECUTIVE COMMITTEE

June 9, 2020

STATE BOARD OF EQUALIZATION



Don H. Gaekle \_\_\_\_\_ Item # M1 \_\_\_\_\_

Item Name: Impact of Covid-19 on PT Admin.

Meeting Date: 6/09/20 Minutes Exhibit #: 6.3

PUBLIC COMMENT

The Honorable Antonio Vazquez, Chair  
California State Board of Equalization  
450 N Street  
Sacramento, CA 94279

RE: CAA Input to State Board of Equalization Meeting June 9, 2020

Dear Chair Vazquez,

This letter serves as a summary of CAA positions on the various options proposed in the agenda for the June 9, 2020 Board of Equalization (BOE) meeting. Attached to this letter are letters of CAA position on pending legislation relevant to the topics on your agenda. For more in depth analysis I refer you to letters submitted during the Working Group process on behalf of the CAA and by the Assessors of Santa Clara, Plumas, San Mateo and Stanislaus counties and various County Counsels.

### Working Group 1: Business Property Statements, 571 L

From the CAA perspective, the Governor's Executive Order N16-20 extending the Forms 571 filing deadline to May 31, 2020 (June 1, 2020), and BOE LTA 2020/024 effectively resolved this issue for the 2020 filing period. Although a final survey has not been completed, counties have generally received most of the returns anticipated as of the extended filing date.

### Issue paper on the Extent of BOE Authority Under Section 155 to Extend Deadlines:

The CAA would ask that, in the interest of transparency, the Board also make public the entire opinion on the Board's authority under section 155 written by BOE Counsel Henry Nanjo. Public discussion of the Boards authority can only be understood by the public with all information available, given that the advice contained in the issue paper directly conflicts with the advice of BOE Counsel.

We would advise that public discussion be continued to a later date pending public access to all relevant documents.

### Working Group 2. Assessment Appeals Relief: RTC 1604(c) for AABs 2-Year Statute of Limitations Deadline to Hear Appeals; and RTC 1603 & 1605 for Taxpayers 60- Day Deadline to File an Appeal on Notice of Supplemental or Escape Assessment

Working Group 2 Options presented on the Boards June 9, 2020 agenda:

**President**

**DON H. GAEKLE**

Stanislaus County

[gakled@stancounty.com](mailto:gakled@stancounty.com)

**Immediate Past President**

**LESLIE K. DAVIS**

Calaveras County

[ldavis@co.calaveras.ca.us](mailto:ldavis@co.calaveras.ca.us)

**President-Elect**

**ERNEST J. DRONENBURG**

San Diego County

[ernest.dronenburg@sdcounty.ca.gov](mailto:ernest.dronenburg@sdcounty.ca.gov)

**Vice President**

**CARMEN CHU**

San Francisco City & County

[Carmen.Chu@sfgov.org](mailto:Carmen.Chu@sfgov.org)

**Treasurer**

**KRISTINE LEE**

Kings County

[kristine.lee@co.kings.ca.us](mailto:kristine.lee@co.kings.ca.us)

**Presidential Appointments**

**\*CHARLES LEONHARDT**

Plumas County

[cleonhardt@countyoofplumas.com](mailto:cleonhardt@countyoofplumas.com)

**JEFFREY PRANG**

Los Angeles County

[jprang@assessor.lacounty.gov](mailto:jprang@assessor.lacounty.gov)

**\*MARC TONNESEN**

Solano County

[mctonnesen@solanocounty.com](mailto:mctonnesen@solanocounty.com)

**\*LARRY STONE**

Santa Clara County

[lstone96@hotmail.com](mailto:lstone96@hotmail.com)

**JIM ROONEY**

Amador County

[jrooney@amadorgov.org](mailto:jrooney@amadorgov.org)

**Regional Representatives**

**CHRISTINA WYNN**

Sacramento County

[wynnnc@sacounty.net](mailto:wynnnc@sacounty.net)

**PETER ALDANA**

Riverside County

[paldana@asrclrec.com](mailto:paldana@asrclrec.com)

**KARL WEILAND**

El Dorado County

[karl.weiland@edcgov.us](mailto:karl.weiland@edcgov.us)

**Ex-Officio/Secretary**

**LESLIE MORGAN**

Shasta County

1450 Court Street, Ste 208

Redding, CA 96001

Phone (530) 225-3600

**Committee Chairs**

**Standards**

**JON LIFQUIST**

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**CHRISTINA WYNN**

Sacramento County



# CALIFORNIA ASSESSORS' ASSOCIATION

## EXECUTIVE COMMITTEE

### **Option 1. Issue an LTA extending the 2-year deadline for AABs by 40 days under Section 155.**

BOE has this authority and has already used it to approve extensions when requested. However, to the extent that the BOE would claim this authority to include extending time for acts by taxpayers in filing appeals on Notices of Supplemental or Escape Assessments we disagree.

### **Option 2. Issue an LTA encouraging AABs to request taxpayers to submit waivers due to COVID-19 with a time certain beyond 40 days for a hearing.**

Although possible this would be cumbersome and needlessly involve the taxpayer when the government entity could more efficiently provide for this relief.

### **Option 3. Request an Executive Order for AABs to selectively postpone taxpayer appeals beyond 2 years.**

The CAA supports this request/solution proposed by the CACEO and looks forward to assisting in this effort.

The CAA also supports CACEO sponsored Assembly Bill 3373, please see attached CAA letter of support.

### **Working Group 3. Section 170 Disaster Relief for COVID19 Calamity Discussion and possible action on the meaning of RTC 170 relative to COVID-19 restricted access to property and reduced value.**

Working Group 3 Options presented on the Boards June 9, 2020 agenda:

### **Option 1. Issue a Letter to Assessors encouraging acceptance of claims for mid-year declines in value due to COVID-19 pandemic; if denied, taxpayers may go to court.**

The CAA opposes the issuance of any LTA asking assessors to accept filings, the basis for which are contrary to Article XIII Section 15 of the California Constitution which requires that physical damage must occur to qualify for relief from a disaster.

### **Option 2. Propose/support legislation to amend RTC 170 to further define economic/physical damage, and/or seek an Executive Order from the Governor.**

Article XIII Section 15 of the California Constitution states:

“The Legislature may authorize local government to provide for the assessment or reassessment of taxable property physically damaged or destroyed after the lien date to which the assessment or reassessment relates.”

The CAA opposes any effort to amend Section 170 that is not in keeping with the Article XIII Section 15 Constitutional requirement for physical damage. Please see the attached CAA letter of opposition to Senate Bill 1431 (Glazer).



# CALIFORNIA ASSESSORS' ASSOCIATION

## EXECUTIVE COMMITTEE

### **Option 3. Issue a Letter to Assessors providing guidance on the Board's current interpretation of Section 170 relief.**

The CAA agrees with the BOE Legal department interpretation of Section 170 relief.

### **Option 4. Do nothing; maintain status quo.**

The CAA recommends taking no action.

### **Working Group 4. Proposition 8 – Decline In Value Relief for January 1, 2020 Discussion and possible action on whether COVID-19 triggered decline in value relief under Proposition 8. Issue as defined by Working Group: Is any immediate relief for a decline in property value under Proposition 8 from COVID-19 available in 2020?**

Working Group 4 Options presented on the Boards June 9, 2020 agenda:

### **Option 1. Propose/support legislation to change the lien date from January 1, 2020 to a later date in this year only.**

The CAA advises that such an effort would not be seriously considered by the legislature and, legislative considerations aside, such a solution would rain chaos on schools, local government and State government financing, contrary to the public good.

### **Option 2. Propose/support amendments to RTC 402.5 and Rule 324(a) to allow Assessors/AABs to consider comparable sales occurring up to 90 days after January 1, 2020 lien date for this year only.**

Revenue and Taxation Code Section 402.5 already grants this and states:

“When valuing property by comparison with sales of other properties, in order to be considered comparable, the sales shall be sufficiently near in time to the valuation date, and the properties sold shall be located sufficiently near the property being valued, and shall be sufficiently alike in respect to character, size, situation, usability, zoning, or other legal restriction as to use unless rebutted pursuant to Section 402.1, to make it clear that the properties sold and the properties being valued are comparable in value and that the cash equivalent price realized for the properties sold may fairly be considered as shedding light on the value of the property being valued. “Near in time to the valuation date” does not include any sale more than 90 days after the valuation date.”

Assessors already operate under and support existing RTC 402.5 and Rule 324(a) through (e) as written.



# CALIFORNIA ASSESSORS' ASSOCIATION

## EXECUTIVE COMMITTEE

### **Option 3. Issue an LTA in coordination with Assessors, taxpayers and AABs to develop 2020/21 uniform capitalization rates/rate of return for valuing business properties impacted by COVID-19.**

The CAA opposes such an LTA. Each property and the factors affecting it, and therefore market capitalization rates, are unique within and among counties and such an effort would not be in keeping with sound appraisal practice.

Where BOE capitalization rates are developed for Williamson Act or Mills Act properties, owners are required to sign contracts giving up control of significant rights in their properties for extended time periods. In the case of Williamson Act Properties, owners waive their rights to develop properties for any higher or better use for ten years at a time in self-renewing contracts.

### **Option 4. Issue an LTA providing guidance on proactive processing of declines in value and suggestions for discovering reduced market values.**

The CAA recognizes that the COVID-19 emergency may lead to market value declines as the real estate market reacts to the economic challenges. Assessors across the state will be monitoring market sales as the year progresses in anticipation of reductions impacting the January 1, 2021 lien date. As in past real property downturns, assessors will be proactive in their response.

There is no market evidence, that is available within the review parameters for the January 1, 2020 lien date, that would support declines in value using accepted appraisal standards and principles.

### **Option 5. Do nothing; maintain the status quo**

The CAA recommends taking no action on this item.

### **Working Group 5. Waiver of Wet Signature Requirement of 571 and Other Forms Discussion and possible action on whether the BOE should authorize Assessors to accept electronic signatures during the shelter in place orders resulting from the COVID-19 pandemic. Issue as defined by Working Group: Should the Board issue guidance encouraging Assessors to accept 571 and other forms without wet signatures?**

Working Group 5 Options presented on the Boards June 9, 2020 agenda:

**Option 1. Issue an LTA providing guidance on authenticating electronically filed 571's for quick approval under 441(k) – to identify for Assessors acceptable methods under the current emergency environment and expedite approval of modified authentication methods they propose. (BOE issues LTA 2020/022 dated May 4, 2020, issuing guidance on accepting electronic signatures.)**

The CAA appreciates the action taken through the LTA.



# CALIFORNIA ASSESSORS' ASSOCIATION

## EXECUTIVE COMMITTEE

**Option 2. Issue an LTA or Emergency Rule intended to ease authentication criteria for electronic submissions during this time, provided that the desirable ratio of risk-to-benefit is consistent with state law and Executive Orders.**

**Option 3. Sponsor/propose legislation establishing emergency authentication standards for the production/transmission of electronic scans of signed documents.**

**Option 4. Issue a request to the BOE Executive Director to immediately develop a plan that identifies ways to expand the approval of eSignature programs across the state.**

The CAA supports the implementation of electronic/digital signature standards and capabilities for Assessors and all levels of government and looks forward to working with the BOE in improving these capabilities now and in the future.

**Option 5. Do nothing; maintain the status quo.**

The CAA believes this is an area where the BOE can and should support actions to improve the efficiency of digital capabilities for the benefit of the public, Assessors and the BOE.

Thank you for your interest in the CAA positions and input on these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Don H. Gaekle".

Don H. Gaekle, President  
California Assessors Association

CC Honorable Members of the Board of Equalization  
Brenda Fleming, Executive Director, Board of  
Equalization CAA Member Assessors  
Board Proceedings



# CALIFORNIA ASSESSORS' ASSOCIATION EXECUTIVE COMMITTEE

May 28, 2020

The Honorable Mike McGuire, Chair  
Senate Governance and Finance Committee  
State Capitol, Room 408  
Sacramento, CA 95814

**RE: AB 3373 – SUPPORT**

Dear Chair McGuire:

The California Assessors' Association strongly supports AB 3373. We ask that your committee approve this seemingly minor, but critically important piece of legislation.

Article XIII Section 16 of the State Constitution authorizes a county's Board of Supervisors to serve as the local board of equalization, or to appoint one or more Boards to act in their stead. For reasons of knowledge, specialization and time, many Boards of Supervisors do appoint assessment appeals boards to act for them. However, under Revenue and Taxation Code Section 1621 counties are limited to a maximum of five appeals boards. This number of local assessment appeals boards is insufficient to handle the caseload of appeals in many of our State's large counties, even under normal conditions.

In Los Angeles County, for example, the high volume of appeals cases has created a large backlog. At its peak, this backlog reached 40,000 cases, some dating back to the 2008 Financial Crisis. Today, Los Angeles County still has approximately 20,000 outstanding appeals to process. Statewide, county assessment appeals boards receive upwards of 70,000 appeals each year. The current system is unable to address this volume work. The consequences of this insufficient system, and the backlogs it creates, are serious.

Of greatest consequence is the financial cost to a county if an appeal is not heard within two years of the date of filing. If not timely heard, the applicant's "opinion of value" becomes the assessed value for the year under appeal. The opinions of value entered by applicants are frequently submitted without any data or methodology supporting them. They are often entered as a small percentage of the assessed value, or even as zero dollars. This can cause a significant and unnecessary loss of local government revenue, should the appeal not be timely heard.

Taxpayers should also be entitled to a fair and expedient resolution of their appeal. Since they must pay property taxes first, a delayed or lengthy appeals process can place an undue financial burden on taxpayers, who may incur a significant opportunity cost during that time. Likewise, delays can increase interest costs for counties if reductions are ultimately ordered by an appeals board long after initial payment of taxes is made.

**President**

**DON H. GAEKLE**

Stanislaus County

[gaekled@stancounty.com](mailto:gaekled@stancounty.com)

**Immediate Past President**

**LESLIE K. DAVIS**

Calaveras County

[ldavis@co.calaveras.ca.us](mailto:ldavis@co.calaveras.ca.us)

**President-Elect**

**ERNEST J. DRONENBURG**

San Diego County

[ernest.dronenburg@sdcounty.ca.gov](mailto:ernest.dronenburg@sdcounty.ca.gov)

**Vice President**

**CARMEN CHU**

San Francisco City & County

[Carmen.Chu@sfgov.org](mailto:Carmen.Chu@sfgov.org)

**Treasurer**

**KRISTINE LEE**

Kings County

[kristine.lee@co.kings.ca.us](mailto:kristine.lee@co.kings.ca.us)

**Presidential Appointments**

**\*CHARLES LEONHARDT**

Plumas County

[cleonhardt@countyofplumas.com](mailto:cleonhardt@countyofplumas.com)

**JEFFREY PRANG**

Los Angeles County

[jprang@assessor.lacounty.gov](mailto:jprang@assessor.lacounty.gov)

**\*MARC TONNESEN**

Solano County

[mctonnesen@solanocounty.com](mailto:mctonnesen@solanocounty.com)

**\*LARRY STONE**

Santa Clara County

[lstone96@hotmail.com](mailto:lstone96@hotmail.com)

**JIM ROONEY**

Amador County

[jrooney@amadorgov.org](mailto:jrooney@amadorgov.org)

**Regional Representatives**

**CHRISTINA WYNN**

Sacramento County

[wynnnc@saccounty.net](mailto:wynnnc@saccounty.net)

**PETER ALDANA**

Riverside County

[paldana@asrclkrec.com](mailto:paldana@asrclkrec.com)

**KARL WEILAND**

El Dorado County

[karl.weiland@edcgov.us](mailto:karl.weiland@edcgov.us)

**Ex-Officio/Secretary**

**LESLIE MORGAN**

Shasta County

1450 Court Street, Ste 208

Redding, CA 96001

Phone (530) 225-3600

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The ultimate effect of COVID-19 on the real estate market is unclear and will be evolving, but it may well result in a spike of assessment appeals statewide. Property owners will almost certainly file more appeals for Decline-In-Value review. At the same time, the Schools and Communities First Ballot Initiative (Split Roll), scheduled to appear on the November 2020 ballot, would also lead to an explosion of assessment appeals, if passed by the voters.

AB 3373 proposes the much needed and easily implemented solution of removing the cap now placed on the number of assessment appeals boards that a county can empanel. Creating more assessment appeals boards will allow counties to process appeals in a timelier manner, thus addressing current backlogs and providing capacity to handle future increases. Expedience in the assessment appeals process is beneficial to counties and taxpayers alike, and is needed now more than ever.

For these reasons, the California Assessor's Association respectfully urges your support of AB 3373.

Sincerely,



Don H Gaekle, President  
California Assessors' Association

CC: CAA Members  
Rob Grossglauser, CAA Advocate  
Senate Governance and Finance Committee Members



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**President**  
**DON H. GAEKLE**  
Stanislaus County  
[gaekled@stancounty.com](mailto:gaekled@stancounty.com)

**Immediate Past President**  
**LESLIE K. DAVIS**  
Calaveras County  
[ldavis@co.calaveras.ca.us](mailto:ldavis@co.calaveras.ca.us)

**President-Elect**  
**ERNEST J. DRONENBURG**  
San Diego County  
[ernest.dronenburg@sdcounty.ca.gov](mailto:ernest.dronenburg@sdcounty.ca.gov)

**Vice President**  
**CARMEN CHU**  
San Francisco City & County  
[Carmen.Chu@sfgov.org](mailto:Carmen.Chu@sfgov.org)

**Treasurer**  
**KRISTINE LEE**  
Kings County  
[kristine.lee@co.kings.ca.us](mailto:kristine.lee@co.kings.ca.us)

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**\*CHARLES LEONHARDT**  
Plumas County  
[cleonhardt@countyofplumas.com](mailto:cleonhardt@countyofplumas.com)

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Los Angeles County  
[jprang@assessor.lacounty.gov](mailto:jprang@assessor.lacounty.gov)

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Solano County  
[mctonnesen@solanocounty.com](mailto:mctonnesen@solanocounty.com)

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Santa Clara County  
[lstone96@hotmail.com](mailto:lstone96@hotmail.com)

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**KARL WEILAND**  
El Dorado County  
[karl.weiland@edcgov.us](mailto:karl.weiland@edcgov.us)

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**LESLIE MORGAN**  
Shasta County  
1450 Court Street, Ste 208  
Redding, CA 96001  
Phone (530) 225-3600

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**Standards**  
**JON LIFQUIST**  
Kern County

**Legislative**  
**JESSE SALINAS**  
Yolo County

**Education**  
**CHRISTINA WYNN**  
Sacramento County

May 15, 2020

The Honorable Mike McGuire, Chair  
Senate Government and Finance Committee  
State Capitol, Room 408  
Sacramento, CA 95814

Re: SB 1431, **Oppose**, Set for hearing, May 21, 2020

Dear Chair McGuire:

The California Assessors' Association (CAA), opposes SB 1431. This bill seeks to provide property tax refunds to owners of commercial properties due to the Governor's COVID-19 "shelter in place" orders. It proposes to do so by making available mid-year property assessment reductions based on disaster relief for economic losses absent physical damage and contrary to the State Constitution.

Assessors understand the underlying sentiment. Californians are hurting from the economic crisis triggered by the pandemic. They need help, and they need help immediately. Property tax refunds envisioned by SB 1431 would not achieve that outcome. Refund checks, under this proposal, would not be received until well after the immediate crisis has passed. Fortunately, the correct course of action has already begun. We applaud the efforts by Congress and the President in providing \$2.3 trillion in stimulus aid to businesses and local governments, along with the \$850 billion in loans from the Federal Reserve.

### Constitutional Issues

The CAA opposes SB 1431 as it is unconstitutional. As much as Assessors desire to help property owners, we cannot ignore the plain language of the California Constitution. Article XIII, Section 15, which mandates that relief can only be granted when there is physical damage (such as a fire, flood or earthquake).

When such a calamity occurs, the extent of the physical damage can be readily determined, including the date of the damage and the date of repair. Both are necessary elements for assessors to calculate appropriate assessment relief. The Constitutional provision for calamity relief addresses physical damage only. Economic change causing declines in market value is addressed by Section 51(a)(2), enacted after the 1978 voter approved constitutional amendment on the ballot as "Proposition 8" which followed Proposition 13.

Both the law and sound appraisal theory prevent assessors from granting assessment reductions for disaster relief to businesses, based solely on financial loss. The tension between what assessors would like to do, and what the law allows, is not new.



# CALIFORNIA ASSESSORS' ASSOCIATION

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This same conflict arose following the 9/11 terrorist attacks when the airlines prevailed upon the Board of Equalization to pass Rule 139 requiring that assessors consider economic loss as a qualifying cause for disaster relief. Ultimately, Rule 139 was overturned by the Appellate Court, citing its conflict with Constitutional authority. Attached is a memo from Santa Clara County Deputy County Counsel Robert A. Nakamae to Santa Clara County Assessor Larry Stone, discussing COVID-19 disaster relief in relationship to the California Constitution, Revenue and Taxation Code Section 170, and *Slocum v. State Board of Equalization*.

Fundamentally, the property tax system is built upon the public's confidence that the law will be fairly and accurately administered without bias or prejudice, in good times and in bad times. Article XIII Section 15 of the State Constitution states:

“The Legislature may authorize local government to provide for the assessment or reassessment of taxable property *physically* damaged or destroyed after the lien date to which the assessment or reassessment relates.” [Emphasis added.]

In the seminal case overturning Rule 139, *Slocum v. State Board of Equalization*, the Court of Appeal held that a property owner must show that the property was physically damaged or destroyed. The *Slocum* court held physical damage is distinct from economic damage, and that Rule 139 improperly expanded the definition of damage beyond Section 170.

The court in *Slocum* reiterated this very point:

The plain language of this constitutional provision permits reassessment where taxable property is “physically damaged or destroyed.” Statutes inconsistent with our Constitution are void.

As further noted by the *Slocum* court:

we conclude that inclusion of the term expressed the literal understanding and intent of the task force as it interpreted former Section 2.8. In other words, physicality has *always* been a constitutional requirement, even when not explicitly stated. As explained by the legislative analyst in the very ballot argument to which Airlines refer us, one of the purposes of the proposition was to clarify wording. Insertion of the word “physical” did just that.

The California Attorney General also recognized the constitutional need for physical damage as the basis for property tax relief as far back as 1972.

### Appraisal Issues

SB 1431 would require that assessors set aside the Constitutional requirement to value properties based upon market values and application of nationally recognized appraisal practices and theories. This is precisely why previous efforts to utilize the property tax system for short-term relief have failed. For example, SB 1431 would require that assessors attempt to provide relief without adequate market data to support reassessments. There would be no way to verify that the reassessments were impartial or consistent, thereby seriously undermining the credibility of the entire property tax system.

# CALIFORNIA ASSESSORS' ASSOCIATION

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Time and again attempts have been made to expand disaster relief beyond the plain language of the Constitution, which requires “physical damage,” to include damage from economic harm. There is substantial historical precedent denying this incorrect interpretation, which has stood the test of time for more than 40 years.

### Solutions

Thankfully, Revenue and Section 51 (a)(2) provides temporary property assessment reductions, which assessors have applied equitably and proactively through the years. When the market value of a property declines below the assessed value, as of the January 1 lien date, reductions are enrolled. At the height of the Great Recession, assessors reduced the values on more than three million properties, reducing hundreds of billions in assessed value. As the market reacts over time assessors will use existing law, and defensible, accurate local market data to reflect any decline in values caused by the COVID-19 crisis for subsequent lien dates.

Assessors are local elected officials. We are especially attuned to the financial plight of business property owners in our communities because of COVID-19. We are aware that many business owners are struggling to survive this week and this month. SB 1431 will not help these property owners now, or soon. It gives a false promise of an immediate lifeline and it will create chaos in administration of the property tax system. That, in turn, will impact our ability to do the job we have been elected to do. California’s residents and business owners need help to recover from the economic impacts of the Governor’s Stay at Home orders. The property tax system is designed to provide longer term assistance, and is not the proper mechanism to provide relief from this immediate economic harm. That is the roll of the Federal and State governments.

It is our position that SB 1431 is counter to the constitutional requirement that property be physically damaged for property tax disaster relief to occur. We believe that California’s residents and business owners need help to recover from the economic impacts of the Governor’s Stay at Home orders. And they need that help now. We applaud Senator Glazer’s attempt to provide that relief but believe that SB 1431 will not provide the type of immediate relief that is needed. Further, it has the very real potential to severely impact local government operations.

Should you have any questions please contact our advocate in Sacramento, Rob Grossglauer at (916) 402-6742 or [Rob@pinnacleadvocacy.com](mailto:Rob@pinnacleadvocacy.com). You may also contact me at (209) 525-6461 or [gaekled@stancounty.com](mailto:gaekled@stancounty.com)

Sincerely,



Don H Gaekle, President  
California Assessors’ Association

CC: CAA Members  
Rob Grossglauer, CAA Advocate  
Senator Steve Glazer  
Senate Governance and Finance Committee Members