



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

DRAFT

Date Amended:	Chapter 433	Bill No:	AB 308
Tax:	Property	Author:	Cook
Related Bills:	SB 1398 (DeSaulnier)		

BILL SUMMARY

This bill allows for the continued allocation of property tax revenues derived from a power plant located in San Bernardino County using a situs basis method after its transfer to a public utility.

ANALYSIS

CURRENT LAW

Incremental Growth – Countywide. Incremental growth in property tax revenue from state assessed property occurring post-1987, with the exception of railroad property¹ and certain electrical generation facilities as noted later, is shared on a “**countywide**” basis. The increase in revenue could result from increased property values, new acquisitions of property, or new construction. Incremental growth revenue is distributed to nearly all governmental agencies and school entities in the county in proportion to each entity’s share of the county’s total ad valorem property tax revenue in the prior year. Under the countywide basis of revenue allocation, all entities receive a share in the growth in revenue regardless of whether the value growth actually occurred within the jurisdictional boundaries of the particular entity.

Electric Generation Facilities

The allocation of property tax revenues derived from electric generation facilities depends upon various factors, such as the owner and date of significant events, as follows:

Locally Assessed Electric Generation Facilities – Situs Basis. Property tax revenues from locally assessed property are allocated on a situs basis. This means that the revenues accrue only to those taxing jurisdictions in the tax rate area where the property is located. Some facilities, such as co-generation plants and facilities using renewable sources of energy such as wind or solar, are assessed at the local level by the county assessor.

State Assessed Electric Generation Facilities – Varies.

- **Public Utility Owned Power Plants – Placed in Service before 01/01/07– Countywide Basis.** Revenues from state assessed electrical generation facilities placed in service by a rate regulated public utility before January 1, 2007 are allocated using the countywide basis. §100
- **Public Utility Owned Power Plants – Placed in Service on or after 01/01/07– Hybrid Basis.** Revenue from state assessed electrical generation facilities placed in service by a rate regulated public utility on or after January 1, 2007 is allocated according to a statutory formula that is a **blend of the countywide and situs basis methods**. The allocation is as follows: the county, K-14 school districts, and non-

¹ For railroad property, incremental growth is shared on a countywide basis for post 2007 growth.

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enterprise special districts receive the same percentage of tax revenues they received in the previous year; the city receives 90 percent of the remaining property tax revenues; and the city or water district that provides water service to the power plant receives the remaining 10 percent of revenues. All other entities, including redevelopment entities, receive none of the revenues derived from facility. §100.95

- **Merchant Power Plants – Situs Basis.** Beginning with the 2003-04 fiscal year, revenues from state assessed electrical generation facilities that are not owned by a rate-regulated public utility (i.e., merchant power plants²) are allocated only to the governmental agencies and school entities in the tax rate area where the facility is located (i.e., **situs basis**). From 1999 through 2003, merchant power plants were locally assessed by the local county assessor. As a result, situs basis revenue allocation occurred by default. In 2003, the assessment jurisdiction over merchant power plants was transferred from local county assessors to the Board of Equalization (BOE). Concurrently, the law was changed to continue to provide for situs basis revenue allocation after the switch from local to state assessment. Without this change in law, the revenues from these plants would have been distributed on a countywide basis. §100.9(a)
- **Palomar Energy Center– Hybrid Basis.** Revenues derived from the Palomar Energy Center, which was placed in service in 2006 and owned by San Diego Gas & Electric (SDG&E) in the City of Escondido, are allocated according to a statutory formula that is a **blend of the countywide and situs basis methods**. The allocation is as follows: the county and K-14 school districts receive the same percentage of tax revenues they received in the previous year; the city receives the remaining property tax revenues. The county is to distribute its share to various entities as specified. §100(k)

Mountainview Power Plant: Switching from Situs to Hybrid Basis. The property tax revenues from the Mountainview power plant in San Bernardino County, which is the subject of this bill, have been allocated according to a situs basis pursuant to Section 100.9 since the plant was originally constructed in 2005. It was built and operated by a wholly owned subsidiary of Southern California Edison, a rate regulated utility. As such, it has been treated as a merchant power plant. However, in March 2010, the ownership of the power plant was transferred from the subsidiary to Southern California Edison. As a result, current law requires that the revenue allocation procedures for the plant change from the situs basis for merchant power plants outlined in Section 100.9 to the hybrid basis for public utility owned power plants outlined in Section 100.95.

PROPOSED LAW

This bill adds subdivision (l) to Section 100 to require that the county auditor allocate property tax revenue from the Mountainview power plant only to those governmental agencies and school entities in the tax rate area where the property is located (i.e., situs basis). These provisions apply only if a joint powers authority comprised of cities and a county adopts a resolution stating that the property is subject to a redevelopment plan and provides a copy of the resolution, including a legal description of the property, to the county auditor and the BOE prior to January 1, 2011. This bill also specifies that the BOE may amend the tax rolls for the 2010-11 fiscal year to make the required allocations, and makes conforming amendments to Sections 100.95, 755 and 756.

² Generally, a “merchant power plant” generates electricity for sale in the open wholesale power market, whereas a power plant owned by a public utility generates electricity for its customers use.

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With respect to the functions of the BOE, this bill requires that after the BOE annually determines the value of all of the property owned by Southern California Edison, the portion of value that is allocated to the Mountainview power plant be assigned to the specific tax rate area where the property is located, pursuant to Section 100.9(a).

IN GENERAL

State Assessed Property. Article XIII, Section 19 of the California Constitution requires the BOE to assess property owned or used by regulated railroad companies. It also requires the BOE to assess the property owned by certain public utilities. These properties are commonly referred to as “state assessed” properties because the BOE, rather than the local county assessor, is responsible for determining the value of the property for property tax purposes. However, counties are responsible for billing, collecting, and apportioning the resulting taxes. These functions are the responsibility of the county auditor and the county tax collector.

Unitary Property. A state assessee’s property holdings are valued as a single unit and the total value is subsequently allocated among the counties. Generally, state assessed properties operate as an integrated unit and often cross county boundaries. Property owned or used by a state assessee that is used in the company’s primary operations as part of the company’s integrated system is assessed as “unitary property” and the company is valued as a single unit under the principal of unit valuation. A “unit valuation” of a public utility company or a railroad company captures the value of the company’s property as a system of interrelated assets, rather than a valuation of individual components of land, buildings, and other assets. For these companies, value depends on the interrelation and operation of the entire public utility or entire railroad. For example, there would be little worth to one section of railroad track or one section of an electrical transmission line; rather their value depends on being a part of an integrated system.

Property Tax Revenue Allocation

Property tax revenues derived from state assessed property differ from that of locally assessed property:

Locally Assessed Property. Generally, property tax revenues from locally assessed property are allocated by situs of the property and accrue only to the taxing jurisdictions in the tax rate area where the property is located (i.e., situs basis). A tax rate area is a specific geographical area within a county wherein each parcel is subject to the taxing powers of the same combination of taxing agencies. Statewide there are about 61,300 tax rate areas.

State Assessed Property. The revenue allocation system for state assessed unitary property, with the exception of railroad unitary property, was established by legislation enacted in 1986 via AB 2890 (Stats. 1986, Ch. 1457). Prior to the 1988-89 fiscal year, the property tax revenues from state and locally assessed property were allocated using the situs basis – that is by tax rate area. However, the process of identifying property according to tax rate area had become overwhelming for state assessees. As a result, AB 2890 was enacted to allow state assessees to report their unitary property holdings by county, rather than by individual tax rate area. It also allowed the BOE to allocate unitary values by county, rather than by tax rate area. This change allowed state assessees to receive only one tax bill per county for their unitary property holdings. Previously, each state assessee received hundreds of property tax bills from each

county where they owned unitary property because a separate tax bill was prepared for each tax rate area where property was physically located.

Essentially AB 2890 established a prescribed formula, performed by the county auditor. The results of AB 2890 are as follows:

1. Preserves each local agency's tax base (hereafter called the "unitary base") for any jurisdiction which had state assessed property sited within its boundaries in the 1987-88 fiscal year.
2. Thereafter, annually increases each local agency's "unitary base" by two percent (provided revenues are sufficient).
3. If there is any property tax revenue remaining after each local agency has been distributed their "unitary base" plus two percent, then this surplus revenue, referred to as "incremental growth," is distributed to all agencies in the county. Agencies with unitary bases also receive a share of the incremental growth.
4. "Incremental growth" revenues are shared with all jurisdictions in the county (i.e., county wide distribution) in proportion to the entity's share of property tax revenues derived from locally assessed property.
5. It is often stated that all state assessee revenue is shared "countywide," but this is not technically true. It is only incremental growth that is distributed "countywide" without regard to where the growth in value took place or where new construction occurred.

By establishing unitary bases, jurisdictions were held harmless by the allocation system established by AB 2890 and some jurisdictions (those with little or no state assessed property located in their jurisdictional boundaries prior to AB 2890) have since benefited from the countywide system established for sharing the incremental growth.

The historical rationale for the countywide system. The countywide system was established to ease the administrative burdens on state assesses, the state, and counties. Detailed record keeping was necessary to report property holdings, allocate property value, and allocate property tax revenue by the fine detail of the tax rate area. As previously noted, AB 2890 (Hannigan) in 1986 created the countywide system. According to the author's press release on this bill, the Assembly Revenue and Taxation Committee had held an interim hearing in the Fall of 1985 on property tax issues that resulted in a number of suggested reforms subsequently included in AB 2890. The press release summarizes the various reforms and, with respect to the new revenue allocation system, it describes the proposed new system as follows:

Distribute the value of state assessed property to counties on a countywide basis, and distribute the revenue to local jurisdictions in proportion to their local assessed value.

Rationale: This will eliminate a very burdensome administrative job for the BOE and for taxpayers – the placing of state assessed value into tax rate areas. No jurisdiction will lose any money because the AB 8 distribution formula (and the specific provisions of this legislation) will guarantee all taxing jurisdictions that they will get the same amount of revenue that they got in the prior year from state assesses plus an amount for growth.

In 1987, an Assembly Revenue and Taxation Committee analysis on a related measure, AB 454, provided additional insight into the rationale for establishing the countywide system. That analysis noted:

In AB 2890 (Hannigan) of 1986, a formula distribution of state assessed unitary values was adopted. The justification for this provision were (1) that state assessed unitary property is assessed on a company basis, not on a location basis, and a situs allocation is not consistent with the theory and practice with state assessed valuation procedures and (2) that the attempt to break apart a unitary assessment for the purpose of a situs assessment was causing taxpayers and the State to spend hundreds of thousands of dollars for a bureaucratic purpose that provided no social purpose other than to provide jobs to those doing the work.

Select Properties – Situs Basis. For certain state assessed properties newly constructed after the countywide system was established, legislation was enacted to instead provide revenue allocation under a situs basis. Hence, the property tax revenues derived from these particular projects go to the jurisdictions in the tax rate area where the project was to be sited rather than being shared with all jurisdictions located in the county as “incremental growth.” See the following table for details on the specific properties. §100 (i), (j), and (k).

Electrical Deregulation. As a result of electrical deregulation, 22 electrical generation facilities previously owned by public utilities were sold to private companies. As an additional consequence of deregulation, it was anticipated that non-public utility companies would construct future generation facilities. Because of these developments, the BOE decided to examine the question of the boundaries of its assessment jurisdiction over companies selling electricity in a post-deregulation era.

Prior to deregulation, local county assessors assessed all electrical generation facilities except those owned by the regulated public utilities. This generally included co-generation facilities and facilities using renewable sources of energy such as wind or solar. Immediately after deregulation, county assessors additionally assumed the assessment of power plants divested by regulated public utilities as well as newly constructed power plants built by private companies post-deregulation. The transfer of assessment jurisdiction of divested plants was a result of a BOE regulation, Rule 905. However, beginning in 2003, the BOE amended this regulation to reassert its jurisdiction over divested electrical generation facilities and certain newly constructed facilities. The BOE maintained and continues to assess, those generation facilities owned by public utilities, which are primarily hydroelectric and nuclear facilities.

Electrical Deregulation and Revenue Allocation: Divestiture of Power Plants – Situs Basis. A significant issue raised by interested parties in the hearings on Rule 905 was the revenue allocation consequences of state vs. local assessment of electrical generation facilities. Many local jurisdictions made decisions to approve the construction of new facilities in their communities based in part on the expected property tax revenues. Under local assessment, revenue allocation was situs based. A transition to state assessment (and by default to countywide distribution) would significantly diminish the revenue proceeds from these properties. To address this concern, AB 81 (Migden, Stats. 2002, Ch. 57) changed the revenue allocation of these divested and newly constructed facilities to provide for situs basis revenue allocation under state assessment. Thus, the revenue from newly constructed and repowered plants

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remained situs based after the BOE reasserted its jurisdiction over these properties. The revenue allocation of power plants *divested* by public utilities, as well as those *newly constructed* by merchant power plant owners, has been on a situs basis since 1999. *Property Tax Rule 905 and AB 81 (Migden, Ch. 57, Stats. 2002)*

Public Utility Owned Power Plants: Re-entry into Electrical Generation – Hybrid of Countywide & Situs Basis. While it had been anticipated that public utilities would no longer be involved in new electrical generation facilities, this proved not to be the case. In 2004, AB 2558 (Stats. 2004, Ch. 640) was enacted to address the planned construction of the Palomar energy plant that would be sold to San Diego Gas & Electric once construction was complete. Without AB 2558, the property tax revenues from this facility would have switched from situs basis to the countywide basis after the sale of the plant to a rate regulated public utility. This would have negatively impacted the City of Escondido were the plant was located and special purpose legislation related to the revenue allocation for the Palomar facility was enacted. *AB 2558 (Plescia, Stats. 2004, Ch. 640)*

In 2006, general purpose legislation for all future plants newly placed in service by public utilities was enacted through SB 1317 (Torklakson, Stats. 2006, Ch. 791). Southern California Edison sponsored the bill to change the revenue allocation procedures for any facility placed in service by a public utility on or after January 1, 2007 to provide a financial incentive for cities to support the construction of electrical generation facilities and substations within their boundaries by ensuring a greater share of the resulting property tax revenues. *SB 1317 (Torklakson, Stats. 2006, Ch. 791)*

Railroads - Transition to Countywide System. Railroads were not included in the countywide system established in 1986 at the request of that industry. However, in 2006 the industry sponsored legislation to also convert to a countywide system AB 2670 (Stats. 2006, Ch. 791). This change was sought because the railroads had also become overwhelmed with the administrative complexities of reporting unitary property at the micro tax rate area level and sought the benefits of the countywide system. *AB 2670 (Aghazarian, Stats. 2006, Ch. 791)*

TABLE OF REVENUE ALLOCATION PROCEDURES

Revenue allocation procedures for state and local property are summarized in the following table:

PROPERTY TYPE	REVENUE ALLOCATION	REV AND TAX CODE	LEGISLATION
LOCALLY ASSESSED PROPERTY	Situs Basis	§96 et. seq.	AB 8 (1979)
STATE ASSESSED PROPERTY			
Unitary Property* *Special exceptions noted below	Pre-1987 values: Situs Basis Incremental Growth: Countywide	§100	AB 2890 (Stats. 1986, Ch. 1457)
Operating Nonunitary Property³	Countywide	§100	AB 2890 (Stats. 1986, Ch. 1457)

³ Operating nonunitary properties are those that the assessee and its regulatory agency consider to be operating as a unit, but the BOE considers not part of the unit in the primary function of the assessee. These properties are valued

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PROPERTY TYPE	REVENUE ALLOCATION	REV AND TAX CODE	LEGISLATION
Nonunitary Property	Situs Basis	§§755 & 756	
Regulated Railway Companies (Unitary Property)	Pre-2007 values: Situs Basis Incremental Growth: Countywide	§100.11	AB 2670 (Stats. 2006, Ch. 791)
Merchant Owned Power Plants 50 MW or more Location: Statewide	Situs Basis	§100.9 Property Tax Rule 905	AB 81 (Stats. 2002, Ch. 57)
Public Utility Owned Power Plants (2007) <ul style="list-style-type: none">• Qualified property placed in service on or after 1/1/07.	Hybrid Countywide: <i>County K-14</i> <i>Special Districts</i> Situs Basis <i>City</i> <i>Water Provider</i>	§100.95	SB 1317 (Stats. 2006, Ch. 872)
Specific Properties			
Pacific Bell (Computer Center) Location: City of Fairfield	Situs Basis – as specified	§100(i)	AB 454 (Stats. 1987, Ch. 921)
PG&E (Education and Training Center) Location: City of Livermore	Situs Basis – as specified	§100(j)	SB 53 (Stats. 1991, Ch. 465)
SDG&E (Power Plant -Never Constructed*) Location: City of Chula Vista	Situs Basis – as specified	§100(k)*	AB 1108 (Stats. 1993, Ch. 1045)
SDG&E (Palomar Energy Center - Power Plant) Location: City of Escondido (San Diego County)	Situs Basis – as specified	§100(k)	AB 2558 (Stats. 2004, Ch. 640)
Railroad Loading Facility – Not yet constructed Location: Victorville (San Bernardino County)	Situs Basis – as specified	§100.1(a)	AB 2670 (Stats. 2006, Ch. 791)

separately and apart from unitary property (i.e., not valued as part of the unit). An example would be land on which a substation has been removed but it still is carried in the rate base) §723.1

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COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Inland Valley Development Agency (IVDA) to allow it to continue to receive the same portion of property tax revenue from the Mountainview power plant that its received since its completion. Without this bill, the IVDA will receive none of the property tax from the plant since redevelopment agencies are not provided for in Section 100.95.
2. **Mountainview Power Plant: Construction and Sale.** The Mountainview power plant is located in the City of Redlands (San Bernardino County). The power plant was completed in 2005 and was originally owned by an unregulated subsidiary of SCE. As a merchant power plant, situs basis revenue allocation has been in effect since its original construction pursuant to Section 100.9. However, in March 2010 the plant was transferred to SCE, a regulated public utility. The ownership transfer has triggered a change in the revenue allocation procedure to that outlined in Section 100.95.
3. **Mountainview Power Plant: Redevelopment Project Area.** The Mountainview power plant is located within the Inland Valley Development Agency (IVDA) redevelopment project area. Formed in 1990, IVDA is a joint powers authority comprised of the County of San Bernardino and the cities of Colton, Loma Linda, and San Bernardino. The IVDA is responsible for redeveloping the non-aviation portion of the former Norton Air Force Base and surrounding properties. Since the plants construction, a large percentage of the property taxes derived from the plant have been allocated to the IVDA (special property tax revenue allocations apply for property located in redevelopment districts whereby the RDA receives a greater share of revenues from activity occurring in the area). The Senate Appropriations Committee estimated that the IVDA receives about \$4.5 million of its \$8.3 million in revenue from the plant. Under existing law, because Section 100.95 does not authorize an allocation to a redevelopment area, the IVDA will receive no share in the property tax revenue without this bill.

COST ESTIMATE

The BOE would incur insignificant costs (less than \$10,000) in making the special revenue allocation procedures.

REVENUE ESTIMATE

Changes in property tax revenue allocation procedures is a zero sum game with winners and losers. This bill allows the revenue allocation procedures to remain the same.

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