



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/20/10	Bill No:	AB 2362
Tax:	Property	Author:	Skinner and Blakeslee
Related Bills:	Proposition 13 (2010)		

BILL SUMMARY

This bill would create a 10-year new construction exclusion for improvements to pre-1978 wood frame multiunit residential buildings where the ground floor portion of the structure causes soft, weak, or open-front wall lines (i.e., “**soft-story buildings.**”)

NOTE: This bill will not become operative if Proposition 13 (2010) is approved by voters.

SUMMARY OF AMENDMENTS

The amendments since the last analysis delete any specificity as to the type of improvements to which the proposed new construction exclusion would apply.

NOTE: This analysis presumes the author intends to limit the new construction exclusion to those improvements made for seismic safety related purposes and that additional corrective amendments will be made to limit the new construction exclusion to seismic safety related improvements.

ANALYSIS

CURRENT LAW

The law requires that when new construction occurs the total assessed value of the property must be increased by an amount equal to the added value of the construction or addition.

However, Article XIII A, Section 2(c) of the California Constitution gives the Legislature the authority to exclude certain items from the definition of “new construction.”

Two constitutional amendments, Proposition 23 in 1984 and Proposition 127 in 1990, provide a new construction exclusion for certain improvements made for seismic safety purposes.

- Proposition 23 (1984) amended Section 2(a) of Article XIII A of the California Constitution and Revenue and Taxation Code Section 70(d) is the implementing statute.
- Proposition 127 (1990) amended Section 2(c)(4) of Article XIII A of the California Constitution and Revenue and Taxation Code Section 74.5 is the implementing statute.

Section 70(d) applies only to buildings with “unreinforced masonry bearing walls.” These are walls that are built with bricks, cement blocks, or other types of masonry material, which do not have steel reinforcing bars. This section only applies if the building must be improved to comply with a local ordinance, such as a county or city mandatory strengthening program. This exclusion applies to qualifying construction completed on or after January 1, 1984 and is limited to the first 15 years after the work is completed.

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Section 74.5 applies to any qualifying construction **other than** work that would fall under the 15 year new construction exemption for unreinforced masonry structures provided under Section 70(d). Qualifying construction includes (1) seismic retrofitting improvements, as defined, and (2) improvements utilizing earthquake hazard mitigation technologies, as defined. Unlike Section 70(d), it is not necessary that the qualifying construction be mandated by a local government. In addition, this exclusion applies to qualifying construction completed on or after January 1, 1991 and the exclusion is not subject to any time limit.

Comparison of Seismic Safety Exclusions

	PROPOSITION 23	PROPOSITION 127
Year Approved	1984	1990
Constitutional Amendment	Art. XIII A, Sec. 2(a)	Article XIII A, Sec. 2(c)(4)
Revenue & Taxation Code	Section 70(d)	Section 74.5
Time Limit	15 years (unless there is a change in ownership before 15 years)	None (until there is a change in ownership)
Building Type	Unreinforced masonry	Any - except a masonry building qualifying under §70(d)
Mandated Improvements	Yes	No
Qualifying Improvements	Those necessary to comply with local ordinance	Seismic retrofitting improvements Improvements utilizing earthquake hazard mitigation technologies (Applies to buildings identified by local government as unsafe in an earthquake)
Assessor Assistance in Identifying	Certificate of Compliance from local government requiring improvements	Building Department reports value
Improvements Expressly Not Covered	Anything not necessary to comply with the ordinance	Alterations, such as new plumbing, electrical, or other added finishing materials
Board Prescribed Claim Form	No	Yes
Claiming	Certificate of compliance from local entity within 6 months of completion	Property Owner notify intent to claim within 30 days of completion Six months to provide all documentation

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PROPOSITION 13 – JUNE 8, 2010 BALLOT

Senate Constitutional Amendment. Proposition 13 (2010) to be presented to voters on June 8, 2010, is the product of Senate Constitutional Amendment 4 (Resolution Chapter 115, Statutes of 2008), which proposes to delete the current provisions of Section 2(a) and Section 2(c)(4) of Article XIII A of the California Constitution and instead provide in new Section 2(a) that the term “newly constructed” does not include that portion of an existing structure that consists of the construction or reconstruction of **seismic retrofitting components**, as defined by the Legislature.

Companion Implementing Statutory Amendments to the Revenue and Taxation Code. If SCA 4 is approved by voters then the provisions of SB 111 (Chapter 336, Stats. 2008) would delete from Section 70 the provisions related to the seismic safety new construction exclusion for unreinforced masonry buildings. Instead, it would amend Section 74.5 to allow its provisions to apply to unreinforced masonry buildings. Subdivision (e) of Section 74.5, which SB 111 would delete, expressly provides that Section 74.5 is not applicable to any property that qualifies for the exclusion under Section 70.

The practical effect of Proposition 13 (2010) is to eliminate the 15-year time limit on the exclusion for unreinforced masonry buildings and provide an exclusion that parallels the one currently provided to all other property types under the provisions of Section 74.5. The table below summarizes the proposed changes.

**Changes to Exclusion for Unreinforced Masonry Buildings
if Proposition 13 (2010) is Approved**

	CURRENT LAW	PROPOSED LAW
Time Limit	15 years	Removed
Mandated Improvements	Yes	Requirement Deleted
Qualifying Improvements	That are necessary to comply with the local ordinance	New Definitions “Seismic Retrofitting Components” <ul style="list-style-type: none"> • Seismic retrofitting improvements • Improvements utilizing earthquake hazard mitigation technologies
Assessor assistance in identifying	Certificate of Compliance from local government requiring improvements	Building Department (after certification from property owner)
Improvements Expressly Not Covered	Anything not necessary to comply with the ordinance	Alterations, such as new plumbing, electrical, or other added finishing materials
Claiming	File certificate of compliance within 6 months of completion	Reduced from six months to within 30 days of completion with six months to provide all documentation

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If Proposition 13 (2010) is approved, then Section 74.5 will be amended to provide a more precise definition of qualifying improvements. That definition is “that portion of an existing structure that consists of the construction or reconstruction of **seismic retrofitting components**, as defined in this section.”

The statutory definition for the new phrase “seismic safety components” used in the constitution would be based on the existing definitions of the phrases “seismic retrofitting improvements” and “improvements utilizing earthquake hazard mitigation technologies.” SB 111 will make corresponding amendments to substitute the phrase “seismic retrofitting components” for “seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies” throughout the text of the section.

In addition, it would clarify that the Building Department reports the costs, rather than the value, of these components to the assessor.

The changes to Section 74.5 if Proposition 13 (2010) is approved are summarized in the table below.

Changes to Exclusion under Section 74.5 if Proposition 13 (2010) is Approved

	CURRENT LAW	PROPOSED LAW
Qualifying Improvements	<p>“Improvements” Seismic Retrofitting Improvements Improvements utilizing earthquake hazard mitigation technologies</p>	Specific portion of construction or reconstruction of “seismic retrofitting components”
Definition of Qualifying Improvements	No Change	No Change
Property Owner Certifies to Building Department	Those portions of the project that are “qualifying improvements”	Those portions of the project that are “seismic retrofitting components”
Building Department Reports To Assessor	“Value” of those portions of the project that are qualifying improvements.	“Costs” of the portions of the project that are seismic retrofitting components

Legislative Declarations. Enactment of SB 111 will add subdivision (e) to Section 74.5 to expressly specify that buildings currently receiving the 15 year exclusion under Section 70(d) will not be reassessed after the 15 year time period expires and that they will continue to receive the exclusion beyond the 15 year period, unless the property changes ownership.

PROPOSED LAW

Conditional. This bill provides that if Proposition 13 (2010), scheduled for the June 8, 2010 statewide election, is approved by voters then the provisions of AB 2363 to amend Section 70 as noted below will **not** become operative.

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Soft-Story Buildings. This bill would add subdivision (f) to Section 70 to provide that a structure “newly constructed” and “new construction” do not include the portion of reconstruction or improvement to a soft-story building.

“Soft-story building” is defined to mean a wood frame, multiunit residential building constructed before January 1, 1978, where the ground floor portion of the structure contains parking or other similar open floor space that causes soft, weak, or open-front wall lines.

Limited Exclusion of 10 Years. The exclusion would remain in effect during the first 10 years following the reconstruction or improvement, but terminate if the property is purchased or changes ownership during that period. In the 11th year, the assessor would enroll the **current** full cash value of the portion of reconstruction or improvement to the structure that was excluded pursuant to this subdivision.

IN GENERAL

Property Tax System. Article XIII, Section 1 of the California Constitution provides that all property is taxable, at the same percentage of “fair market value,” unless specifically exempted, or authorized for exemption, within the Constitution. Article XIII A, Section 2 of the California Constitution defines “fair market value” as the assessor’s opinion of value for the 1975-76 tax bill, or, thereafter, the appraised value of property when purchased, newly constructed, or a change in ownership has occurred. This value is generally referred to as the “base year value.” Barring actual physical new construction or a change in ownership, annual adjustments to the base year value are limited to 2 percent or the rate of inflation, whichever is less. Article XIII A, Section 2 provides for certain exclusions from the meaning of “change in ownership” and “newly constructed” as approved by voters via constitutional amendments.

New Construction. The California Constitution does not define the term “new construction.” Revenue and Taxation Section 70 defines it, in part, to mean:

Any addition to real property, whether land or improvements (including fixtures), since the last lien date.

Any alteration of land or improvements (including fixtures) since the lien date that constitutes a “major rehabilitation” or that converts the property to a different use. A major rehabilitation is any rehabilitation, renovation, or modernization that converts an improvement or fixture to the substantial equivalent of a new improvement or fixture.

With respect to any new construction, the law requires the assessor to determine the added value upon completion. The value is established as the base year value for those specific improvements qualifying as “new construction” and is added to the property’s existing base year value. When new construction replaces certain types of existing improvements, the value attributable to those preexisting improvements is deducted from the property’s existing base year value. (Section 71.)

New Construction Exclusions. Over the years, Article XIII A, Section 2 has been amended to specifically exclude certain types of construction activity from assessment as “new construction.” Consequently, while these improvements may increase the value of the property, the additional value is not assessable.

Prop	Year	Subject	Code	Time Limit
8	1978	Disaster Reconstruction	§70(c)	No
7	1980	Active Solar Energy Systems	§73	No
23	1984	Seismic Safety (Unreinforced Masonry)	§70(d)	Yes
31	1984	Fire Safety Systems	§74	No
110	1990	Disabled Access Improvements (Homes)	§74.3	No
127	1990	Seismic Safety Retrofitting & Hazard Mitigation	§74.5	No
177	1994	Disabled Access Improvements (All Properties)	§74.6	No
1	1998	Environmental Contamination Reconstruction	§74.7	No
13	2010	Seismic Safety Retrofitting (Pending Action)	§70, §74.5	No

BACKGROUND

Health and Safety Code Section 19160, added by AB 304 (Hancock) in 2005, provides detailed Legislative findings and declarations related to soft-story buildings and encourages cities and counties to address the seismic safety of soft-story residential buildings and encourages local governments to initiate efforts to reduce the seismic risk in vulnerable soft-story residential buildings. Those findings provide, in part:

(e) "Soft story" residential buildings are a subset of multistory woodframe structures that may have inadequately braced lower stories that may not be able to resist earthquake motion.

(f) Soft story residential buildings are an important component of the state's housing stock and are in jeopardy of being lost in the event of a major earthquake.

(g) Soft story residential buildings were responsible for 7,700 of the 16,000 housing units rendered uninhabitable by the Loma Prieta earthquake and over 34,000 of the housing units rendered uninhabitable by the Northridge earthquake.

(h) During an earthquake, soft story residential buildings may create dangerous conditions as illustrated in the Northridge Meadows apartment failure that claimed the lives of 16 residents.

(i) The collapse of soft story residential buildings can ignite fires that threaten trapped occupants and neighboring buildings and complicates emergency response.

(j) The Association of Bay Area Governments (ABAG) estimates that soft story residential buildings will be responsible for 66 percent of the uninhabitable housing following an event on the Hayward fault.

(k) The failure of soft story residential buildings is estimated by ABAG to be the source of a disproportionate share of the public shelter population because they tend to be occupied by the very poor, the very old, and the very young.

(l) The Seismic Safety Commission has recommended that legislation be enacted to require state and local building code enforcement agencies to identify potentially hazardous buildings and to adopt mandatory mitigation programs that will significantly reduce unacceptable hazards in buildings by 2020.

(m) The current nationally recognized model code relating to the retrofit of existing buildings is Appendix Chapter A4 of the International Existing Building Code. However, it is not the intent of the Legislature, if other model codes relating to the retrofit of existing buildings are developed, to limit the California Building Standards Commission or a local government, pursuant to Section 19162, to adopting a particular model code.

(n) Therefore, it is the intent of the Legislature to encourage cities and counties to address the seismic safety of soft story residential buildings and encourage local governments to initiate efforts to reduce the seismic risk in vulnerable soft story residential buildings.

COMMENTS

1. **Sponsor and Purpose.** The author has introduced this bill to ensure that such improvements do not result in a property tax increase for at least 10 years.
2. **Amendments.** The **April 20, 2010** amendments delete any specificity or limitation as to the types of improvements to soft-story buildings that are eligible for the proposed 10 year new construction exclusion. The prior version of the bill limited the exclusion to improvements made pursuant to Health and Safety Code Section 50560. However, as noted in the prior analysis, there is no Section 50560 in the Health and Safety Code. A new Section 50560 was added by this bill in its introduced version, but has since been amended out. While the amendments delete the reference to Section 50560 to correct this issue, they did not, in its place, also specify the types of improvements that would qualify.

NOTE: This analysis presumes the author intends to limit the new construction exclusion to those improvements made for seismic safety related purposes and that additional corrective amendments will be made to limit the new construction exclusion to seismic safety related improvements.

3. **What are soft-story buildings?** According to an **Association of Bay Area Government [report issued in May 2009](#)** “[m]any apartments and condos can collapse in earthquakes because they have parking on all or part of the first floor, or open commercial space on that first floor. These buildings typically have outside walls with large openings due to garage doors and display windows, as well as few internal walls, making this story “weak” or “soft” and likely to lean or fall over in earthquakes.”
4. **Soft-story buildings are at risk in major earthquakes.** Buildings with wood-framing in the walls of the first floor and constructed prior to 1980 are more likely to be problematic in an earthquake. In the 1989 Loma Prieta earthquake and the 1994 Northridge earthquake, the collapse of soft-story buildings killed persons and left thousands of housing units uninhabitable. A number of California cities have or will soon have soft-story related ordinances in place to identify soft-story buildings and encourage (or require) seismic retrofits: Alameda, Berkeley, Fremont (mandatory), Los Angeles, Oakland, San Francisco, San Leandro, and Santa Monica. The City of Alameda, has a prepared an overview of this issue entitled [Soft-Story Buildings Vulnerable In Quake](#).
5. **Why not use Section 74.5?** It is unclear why existing Section 74.5 would not apply to these buildings. If there is some deficiency, identification and correction of any deficiencies within Section 74.5 might be preferable. However, if the improvements

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contemplated by this bill do not fall under the provisions of the existing constitutional provision, or if Proposition 13 (2010) is approved, then a new constitutional amendment might be needed.

6. **Is the intent to exclude *all* improvements made to such buildings or just the seismic safety retrofitting improvements?** Should the “improvements” to these buildings relate to, and be expressly limited to, seismic safety retrofitting improvements? Without this specificity, would other remodeling done at the same time also qualify for the 10 year exclusion?
7. **Examples.** A private structural engineering firm located in Oakland, provides pictures of soft-story seismic retrofitting in progress (see the [El Granada Building](#)) on its website as well as various soft-story reports with pictures of such buildings, which provides a visual representation of these improvements.
8. **Why the 10 year time limit?** Limited term new construction exclusions have proved to be administratively problematic. Is there a policy reason to limit the exclusion to 10 years given the unlimited exclusion for other types of seismic safety improvements? Proposition 23 was one of the very first new construction exclusions ever enacted after Proposition 13. No constitutional amendment since then has imposed a time limit on the exclusion and pending Proposition 13 (2010) proposes to remove the 15 year time limit.
9. **Proposition 13 (2010) would ensure equal treatment of property owners who incorporate seismic safety improvements into an existing building regardless of the *type* of building.** Currently, two property owners that install the same types of seismic safety improvements would be treated differently for property tax purposes depending upon whether or not the building is a masonry structure. One would receive a permanent exclusion from reassessment, and the other, the owner of an un-reinforced masonry building, which is most likely an older, potentially historic building, would only receive a 15-year temporary exclusion. This bill creates a similar inequity for wood frame buildings built before 1978.
10. **What if the first story contains a retail business?** The exclusion applies to a “multiunit residential” building.” Would a building with a ground floor retail business or restaurant with residential apartments above qualify? While the majority of soft-story buildings are fully residential with parking on the first story, many identified soft-story buildings have businesses on the first floor.
11. **New construction exclusions remain in effect until the property changes ownership.** Generally, new construction exclusions remain in effect until the property changes ownership, at which point the entire property, including the portion of the property (or additional value) previously excluded from taxation via the new construction exclusion, is subject to reassessment to current market value pursuant to the change in ownership provisions of Proposition 13.

COST ESTIMATE

The Board would incur minor absorbable costs related to informing and advising local county assessors, the public, and staff of the law changes.

REVENUE ESTIMATE

Please Note: This is a preliminary revenue estimate to provide a general overview of the potential revenue implications of this bill.

It would seem that seismic safety improvements to soft-story buildings fall under the new construction exclusion of Section 74.5. If this is true, then this bill might place a 10 year limitation that currently does not exist.

To provide a frame of reference with respect to the possible revenue impact, if existing Section 74.5 does not exclude this work from the definition of new construction, a 2009 report by the [San Francisco Community Action Plan](#) (CAPSS) estimated that the typical costs of retrofitting a soft-story building will range from \$58,000 to \$114,000 per building.

The Seismic Safety Commission has estimated that there are about 46,000 soft-story buildings containing over 730,000 residential units. Cities and counties that have identified the number of buildings in their jurisdiction include: Oakland: 1,500 buildings; Santa Clara County: 2,630 buildings; Berkeley: 400 buildings; San Francisco: 4,400 buildings; and Los Angeles County: 20,000 buildings.

It is not clear if this bill is intended to also exclude from assessment "improvements" above and beyond seismic safety retrofitting such as a complete remodel of the building that includes as one component seismic safety retrofitting. If so, then this would have a greater revenue impact and would likely require additional constitutional authorization to exclude this additional value from assessment.

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