



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/21/08	Bill No:	<a href="#">SCA 19/SB 1569</a>
Tax:	Property Taxes	Author:	Kehoe
Related Bills:			

## BILL SUMMARY

This bill would place a constitutional amendment before voters to provide that assessable “new construction” for property tax purposes does not include the construction or installation of any fire safety retrofitting improvements that meet fire safety building standards.

## ANALYSIS

### CURRENT LAW

Article XIII A, Section 2(c)(2) of the California Constitution gives the Legislature the authority to exempt from the definition of “new construction” the construction or installation of:

- fire sprinkler systems,
- fire extinguishing systems,
- fire detection systems, and
- fire-related egress improvements.

The Legislature enacted Revenue and Taxation Code Section 74 to set forth the detailed definitions and requirements to exclude these types of fire-related construction activities from assessment as “new construction” and to limit the exclusion to work done to existing buildings.

### PROPOSED LAW

**Senate Constitutional Amendment.** SCA 19 would, if approved by voters, designate the existing provisions for fire safety related improvements found in the constitution as subparagraph (A) of paragraph (2) of subdivision (c) of Section 2 of Article XIII A and add new subparagraph (B) to paragraph (2) to provide the Legislature with the authority to exempt from the definition of new construction:

“[t]he construction or installation of **any fire safety retrofitting improvement that meets fire safety building standards**, as defined by the Legislature, that is constructed or installed after the effective date of this subparagraph.”

**Companion Implementing Statutory Amendments.** SB 1569 would amend Revenue and Taxation Code 74 but is currently in a spot bill form.

### 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

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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% 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.** While the constitution does not define the term “new construction,” Revenue and Taxation Code 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 last 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.

When new construction occurs, 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)

**Normal Maintenance and Repair.** While certain *exclusions* to the definition of “new construction” have been amended into the Constitution, as noted below, the Constitution itself does not define the term “new construction.” Revenue and Taxation Code Section 70 defines certain “alterations” of property to be new construction and Property Tax Rule 463 excludes such alterations from the definition of new construction when they are performed for the purpose of normal maintenance and repair. Specific examples listed in Rule 463 include the replacement of roof coverings, new siding, and painting.

**Constitutional Amendments.** Over the years, voters have approved eight constitutional amendments to 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.

<b>Prop</b>	<b>Election</b>	<b>Subject</b>	<b>Code</b>
8	November 1978	Disaster Reconstruction	§70(c)
7	November 1980	Active Solar Energy Systems	§73
23	June 1984	Seismic Safety (Unreinforced Masonry)	§70(d)
<b>31</b>	<b>November 1984</b>	<b>Fire Safety Systems</b>	<b>§74</b>
110	June 1990	Disabled Access Improvements (Homes)	§74.3
127	November 1990	Seismic Safety Retrofitting & Hazard Mitigation	§74.5
177	June 1994	Disabled Access Improvements (All Properties)	§74.6
1	November 1998	Environmental Contamination Reconstruction	§74.7

### Legislative History of Fire Safety New Construction Exclusion

Proposition 31 was approved by voters at the November 6, 1984 general election. It was placed on the ballot by SCA 58 (Resolution Chapter 56, Statutes of 1984). A similar constitutional amendment had failed passage two years earlier at the November 1982 general election. Proposition 7 was placed on the ballot by ACA 53 (Res. Chap. 49, Statutes of 1982).

The intent of the exclusion was to benefit the owner of the building in which the fire detection system is installed by providing a shield against any increase in property taxes that might otherwise result from retrofitting the building with fire safety equipment. According to the analysis of the Assembly Committee on Revenue and Taxation, dated June 4, 1984, local ordinances had started to require that buildings be retrofitted because of a number of fire tragedies. Of particular concern was the cost of retrofitting hotels and motels. Consequently, the California Hotel and Motel Association sponsored the proposed changes to the Constitution to reduce the overall cost of making the fire safety improvements.

#### COMMENTS

1. **Sponsor and Purpose.** The author is sponsoring this measure to ensure that any fire safety retrofitting improvement that meets fire safety standards will not trigger any increase in property taxes.
2. **These bills are a work in progress.** The author's office is working with various interested parties in developing this proposal. In its current form, this bill seems to have limited impact because most fire safety retrofitting improvements would not be considered assessable new construction under existing law. Further, fire sprinkler systems, other fire extinguishing systems, fire detection systems, and fire-related egress improvements already benefit from a new construction exclusion.
3. **Exterior Wildfire Exposure Protection - New California Building Codes.** Recently adopted building codes and standards, California Building Code Chapter 7A, "Materials and Construction Methods for Exterior Wildfire Exposure," are intended to reduce the risk of burning embers igniting buildings as flying embers can travel as much as a mile away from wildfires. The new building codes require siding, exterior doors, decking, windows, eaves, wall vents, and enclosed overhanging decks to meet new code and test standards.  
[http://www.fire.ca.gov/fire\\_prevention/fire\\_prevention\\_wildland.php](http://www.fire.ca.gov/fire_prevention/fire_prevention_wildland.php)
4. **Fire Severity Zones.** New buildings located in any Fire Hazard Severity Zone within State Responsibility Areas, any Local Agency Very-High Fire Hazard Severity Zone, or any Wildland-Urban Interface Fire Area designated by the enforcing agency for which an application for a building permit is submitted on or after January 1, 2008, are required to comply with these new codes.

- Replacement of combustible roof materials (e.g., wood shingles or shake) with fire-resistive roofing (e.g., composite shingles, metal, clay or cement tile).
- Replacement of exterior siding that is vulnerable to fire with fire-resistive cement fibrous siding.
- Replacement of windows with double paned tempered glass.
- Replacement of plastic skylights with tempered glass skylights.
- Replacement or modification of roof gutters to prevent the accumulation of leaves and debris.
- The covering of exterior attic and under-floor vents with 1/8 inch wire mesh to prevent sparks from entering the home.
- The addition of metal screens to windows or replace existing fiberglass screens.
- Installation of spark arrestors in a chimney.
- Replacement of fence segments attached to the house with metal fencing.
- Pavement of driveways to creating a firebreak between the natural area and the area surrounding the front of the home.

7. **Assessable New Construction.** Because this bill is limited to retrofitting an existing building, many of the types of work that would be undertaken would not likely rise to the level of assessable new construction. Most would be either (1) too minor to consider or (2) categorized as normal maintenance and repair. More expensive or major structural changes would likely be undertaken when maintenance or repairs are required for other reasons. For example, when a home's windows, roofing, siding needs to be replaced or redone, the home owner would likely use materials that meet fire safety building standards (i.e., replacing single pane windows with dual pane tempered glass, replacing wood shake singles with cement tile, or replacing siding with siding made of fibrous cement). However, as noted below, a major renovation of a building or home associated with a remodel in which fire retrofitting improvements were included, could in some cases, and in some counties, be considered assessable new construction to which the proposed exclusion would apply.

8. **Major Remodels Could Be Assessable New Construction – Varies by County.** It is possible that a major rehabilitation of a home or building might be considered to be assessable new construction. Section 70 provides that any rehabilitation, renovation, or modernization that converts an improvement to the substantial equivalent of a new improvement is new construction. The determination as to whether construction activity is assessable new construction is made on a case-by-case basis. While there are some basic guidelines in the statutes, property tax rules, and Assessors Handbooks, the various 58 local county assessors may differ in what they consider to be “substantially equivalent of new.” Some might consider the definition to be met if it meets a certain threshold percentage, that is, either a certain percentage of the structure was physically altered or the value or cost of construction is a certain percentage of the value of a comparable new structure (and the percentage might vary by county). While others might use a threshold that the improvement be torn down to the studs and rebuilt. Others do not have any particular set guideline and

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instead rely on field inspection and the property appraiser's judgment for each property in question.

9. **This bill would give property owners certainty that such improvements will not result in increased property taxes.** Given the subjective nature of the determination of assessable new construction, this bill would give property owners some measure of certainty that their property taxes will not increase.
10. **Suggested Technical Amendment.** *Sec. 2(c)(A)* The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, that is constructed or installed after the effective date of this subparagraph.

## **COST ESTIMATE**

This bill would not impact the Board's administrative costs.

## **REVENUE ESTIMATE**

In its current form, this bill seems to have limited impact because it only applies to existing buildings, structures, and homes and most fire safety retrofitting improvements would not be considered assessable new construction under existing law. A major rehabilitation of a building, structure, or home in which it was determined that the building, structure, or home is "substantially equivalent of new" and in which fire retrofitting improvements were included, could in some cases, and in some counties, be considered assessable new construction to which the proposed exclusion could, in part, apply. The revenue impact from this proposal is unknown, but likely minimal.

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